Chapter 6

Occurrence in the Population

The findings of the National Population Survey constitute a baseline for estimating the extent to which sexual offences have been committed against Canadian children, youths and adults. **The main findings of the survey are that at sometime during their lives, about one in two females and one in three males have been victims of unwanted sexual acts. About four in five of these incidents first happened to these persons when they were children or youths.**

The National Population Survey drew upon the experience of a representative sample of Canadians living in all regions of the country. The size of the sample was larger than that usually drawn in national surveys. With respect to the survey's sampling error, the chances of the sample not being representative were between the statistical confidence levels of 0.02 and 0.03 which means that if repeated comparably drawn samples of the population were undertaken, then similar results would likely be obtained from between 97 and 98 per cent of the samples. For most national surveys, the 0.05 level of statistical confidence is adopted.

Until more comprehensive and detailed survey findings are available for the Canadian population, the Committee accepts the results of the National Population Survey as a basis upon which estimates may be made of the occurrence of sexual offences against Canadians. This survey, the first of its kind for Canada with respect to the detailed nature of the questions asked, indicates that sexual offences are endemic, that a significant number of both females and males have been victims of these acts, and that children and youths are disproportionately at risk.

The National Population Survey was undertaken to obtain information in relation to issues specified in the Committee's Terms of Reference. The Committee was asked to examine: "the incidence and prevalence of sexual offences against children and youths in Canada. Where possible, comparisons are to be made with the incidence and prevalence of sexual offences in general". The Committee was also asked to consider "whether such offences are likely to be brought to the attention of the authorities" and "the relationship between the enforcement of the law and other mechanisms used by the community to protect children and youths from sexual abuse and exploitation".

On the basis of its review of completed community surveys of sexual offences against Canadians, the Committee found that there was insufficient information available in these reports dealing directly or in sufficient detail with the issues specified by its Terms of Reference. As a result, the Committee undertook a National Population Survey of Canadians who were age 18 years or older. Information was not obtained directly from children and youths themselves. To have collected such information from children would have entailed obtaining parental consent, which in some instances, would have involved seeking permission from family members or guardians who may have committed sexual offences against minors. While it is recognized that the findings of a restrospective analysis may be affected by an erosion in the ability of persons to recall events, for this reason, the results obtained are likely to be an underestimate rather than an overestimate of the occurrence of incidents of this kind. Because of the intensely personal nature of these acts, the Committee found in its meetings with a number of victims and on the basis of its other surveys that most victims clearly and vividly recalled these incidents.

Elsewhere in the Report, findings are presented from the surveys of cases of sexually assaulted children and youths known to the police, child protection services, hospitals and correctional services. The findings of these surveys describe in detail the circumstances of victims, the types of sexual acts committed and the services provided by these agencies. The results of the National Population Survey show that these public services dealt with only a small fraction of the number of the children and youths who had actually been sexually abused. The principal reason for so few cases being known to these services is that most victims of sexual offences did not seek their assistance, and when such help was sought, they turned primarily to physicians, the police, and to a much lesser extent, social services including child protection workers.

Design of the Survey

Prior to the implementation of the national survey, an initial draft of the questionnaire was pretested in a pilot survey. On the basis of previous research involving the reporting of sexual offences by victims, it was concluded that how such information was obtained affected the types and completeness of the replies received. Many persons are reluctant to discuss these sensitive personal matters with strangers. Such information is only likely to be volunteered in situations where either an informant completely trusts another person, or where the anonymity of the respondent is assured. In order to minimize the influence of external factors, the persons selected in the National Population Survey were asked to complete the questionnaires themselves.

Before the survey was undertaken in each of 210 communities across Canada, a supervisor of the Canadian Gallup Poll spoke with the local Chief of Police or the Police Public Affairs Officer. At these meetings, the purpose of the survey was outlined, a copy of the questionnaire provided, and the police force was asked for its co-operation in the event that questions were raised

about the survey's authenticity. In undertaking the survey, the instructions given to the staff of the Canadian Gallup Poll were:

> "Introduce yourself and hand your identification card to the respondent. Then say, 'this letter will explain our current study, would you read through it please'. Hand the questionnaire which is in a sealed envelope to the respondent. Have your respondent complete it - and seal it in the enclosed envelope."

In the letter given to each person asked to participate in the survey, he or she was informed that:

> "Because of their personal nature, we ask you to answer the questions without the involvement of our interviewer, who has not seen the questionnaire, and who will not be able to discuss them with you. The subject matter is of serious concern today. It is one on which little or no information is available.
>
> The information requested will be held in strictest confidence. There is no place on the questionnaire to identify yourself, and we ask that you do not do so. Your own information will be anonymous.
>
> When you have completed the questions, there is an envelope inside for you to seal your answers. All questionnaires will be returned to the Canadian Gallup Poll, still sealed.
>
> If you have any concerns about the authenticity of this survey, please contact the Police Force Public Affairs Office at (address and telephone number given)."

The National Population Survey was undertaken between the last week of January and the first few days in February, 1983. Following its completion, a story was carried nationally about the survey by newspapers and radio and television stations. Because of the timing of this news report, its publication did not affect the collection of information for the survey. In the city where the story was initially reported, the local newspaper noted that although "some very explicit questions" had been asked in the survey "the police have not received a single complaint". Of 2135 persons contacted, 13 refused to take part in the survey and 114 returned incompletely filled out questionnaires. The response rate to the survey was 94.1 per cent (2008 of 2135). The staff of the Canadian Gallup Poll conducting the survey reported that, as illustrated by the reports cited below, most persons from whom information was obtained took time to review carefully the questionnaire and that they gave serious consideration to the issues raised by the questions asked.

- *Male.* After reading the letter, he was eager to participate. He thought the subject matter was of great concern. Quite interested in the results.
- *Female.* Thought the subject was important and concerned about it. She said it reminded her of taking an exam.
- *Male.* Sat on stairs using my clip board to fill in the questionnaire. No expression, no comments. At the end, said he was pleased to have been able to do it.
- *Female.* After opening an envelope and reading the introduction, she commented that it might be a bit racy for an older person. At the beginning,

she sounded surprised, but enthusiastic. At the end, she carefully checked back each page.

- *Male.* Wanted me to leave it with him before he had read the letter. Explained that that was impossible. After reading letter, was a little reluctant; I pointed out he could phone number on the letter. He was going to do that, but he changed his mind and decided to do the survey. He sat down at dining room table whilst I sat away from him in living room section of the room. He read first page, then got up and took questionnaire into kitchen so I was not able to observe him. He seemed subdued when escorting me to the front door. He talked about the weather, but wished me good luck with my survey.
- *Female.* Wanted to talk at first. She said she was against "those terrible magazines, topless bars, and girls degrading themselves". I had to interrupt her, telling her I couldn't discuss anything. Satisfied expression on face while doing it. When she said goodbye, she said, "very good this is being done".
- *Male.* Wanted to fill it in later and mail it, but agreed to do it. Asked partway through, if women were also doing the survey. No comment or change in expression when I affirmed this. His wife came in and asked what he was doing. He handed her the letter and got up off the sofa and went to a chair. When his young son came in, he closed questionnaire. His wife got up and took her son out of room. His last (and only) comment was, "good idea, but I hope people tell it like it is. Will you get enough out of it? I hope you aren't putting down people's names and addresses". I assured him no record was being made. He looked relieved.
- *Female.* Seemed embarrassed and was fidgety, during filling out the questionnaire. When her son (young teens) came into room, she told him rather curtly she was busy and to sit down and talk to me. Pink face, didn't look at all comfortable, but made no comments, other than a question as to anonymity of persons and locations.
- *Male.* He never looked up until he was finished. He seemed to do a lot of writing at the end. I asked if he minded doing it. He replied, "No".
- *Female.* Opened envelope. Then she laughed and said, "You are interviewing men also?" I replied, "Yes". Then she got right down to the questionnaire. I noticed she swallowed hard during the middle of the questionnaire, but she kept on going.
- *Male.* Started reading and didn't look up. During interview, he wanted to be assured that I was not keeping a record of his address or I had any way of identifying him. I assured him I wasn't. He also asked if females were being interviewed. At the end of the interview, he kept flipping the pages back and forward.

Among the replies received from 2122 persons, nine of 114 who did not complete the questionnaire wrote negative comments about the purpose or contents of the questionnaire. These persons did not complete the section of the questionnaire requesting social and demographic information. Some of the reasons for not participating in the survey were:

- "Your questionnaire is pornographic. Most of this questionnaire isn't applicable to my experience. Some people (older than I am) would have a heart attack at these questions."

- "This survey is a sheer waste of taxpayer's money. It could be better utilized in many better ways than on this garbage."
- "I am sorry such important issues have had to be typed, put in print, consuming tax-payers money. All through it, there is a lack of concern and indifference. It is time Canadians got things together and began to live decently."
- "I do not like loaded questions. You only get the answers you want to hear, so piss off."
- "I refuse to answer this questionnaire. It's stupid."
- "This is too personal. I am a very faithful wife and also believe my husband is too. I think our sex life is not anybody else's business, but ours."
- "This is a waste of paper. Why don't you - please - mind your own business."

Despite the fact that they were asked direct and explicit questions about whether they had been victims of unwanted sexual acts, most of the persons contacted agreed to participate in the survey. Many of them took time to add written comments. The completed questionnaires were sealed in envelopes by the persons participating in the survey, returned to the survey's staff, and subsequently, were forwarded to the Canadian Gallup Poll where the replies were coded.

Extent of Occurrence

The 2008 persons in the National Population Survey were asked whether any unwanted sexual acts had ever been committed against them and how old they were when these incidents had occurred. Preceding these questions, definitions were given of "the sex parts" (e.g., vagina, penis, crotch, and anus) of a person's body. The questions dealing with unwanted sexual acts elicited information about: exposures, threats, touching and attacks. The questions asked were:

- Has anyone ever *exposed* the sex parts of their body to you when you didn't want this? The reply categories were: never happened to me; and circle as many as apply of penis, woman's crotch, breasts, buttocks, nude body, and other (specify).
- Has anyone ever *threatened* to have sex with you when you didn't want this? The reply categories were: never happened to me; and a listing of the number of times these incidents had occurred.
- Has anyone ever *touched* the sex parts of your body when you didn't want this? The reply categories were: never happened to me; and circle as many as apply of: *touched* your penis, crotch, breasts, buttocks and anus; and *kissed/licked* your penis, crotch, breasts, and anus; and other types of touching (specify).
- Has anyone *ever tried to have sex* with you when you didn't want this, or *sexually attacked* you? The reply categories were: never happened to me; and circle as many as apply of: *tried* putting a penis in your vagina, tried putting something else (a finger or an object) in your vagina, tried putting

a penis in your anus, and tried putting something else in your anus; and *forced* a penis in your vagina, forced something else in your vagina, forced a penis in your anus, and forced something else in your anus; *stimulated* or *masturbated* your crotch or penis; and other acts (specify).

A summary of the specific types of unwanted sexual acts reported by persons in the national survey is given in Chapter 7.

Since some persons had been victims of more than one unwanted sexual act, the results listed are non-accumulative with respect to the types of sexual offences reported. About three in five persons in the national survey (57.9 per cent) said that they had never been victims of sexual offences. There were sharp differences between females and males with respect to their having been victims. About one in two females (53.5 per cent) said that she had experienced these types of unwanted sexual acts. In contrast, slightly less than one in three males (30.6 per cent) had been a victim. About one in five (22.3 per cent) of the female victims reported two or more sexual offences in comparison to about one in 15 males (6.6 per cent) who had been involved in two or more such incidents.

Table 6.1

Types of First Sexual Acts Committed Against Males and Females

Type of Sexual Act Committed	Sex of Victim					
	Males (n = 1002)		Females (n = 1006)		Total (n = 2008)	
	No.	Non-Accum.%	No.	Non-Accum.%	No.	Non-Accum.%
None	695	69.4	468	46.5	1163	57.9
Exposed to	89	8.9	198	19.7	287	14.3
Threatened	50	5.0	106	10.5	156	7.8
Touched	128	12.8	236	23.5	364	18.1
Attempted/ assaulted	106	10.6	222	22.1	328	16.3

National Population Survey. Non-accumulative totals. Two or more sexual acts were committed against 22.3 per cent of female victims and 6.6 per cent of male victims.

When each category of unwanted sexual act is considered, as summarized in Table 6.1, the ratio between females and males with respect to the proportions victimized is consistently about two-to-one. While about one in seven persons (14.3 per cent) reported an exposure, acts of this kind had been committed about twice as often against females (19.7 per cent) as against males (8.9 per cent). About one in 13 persons (7.8 per cent) said that another person had threatened to have sex with them. Such threats were reported by about one in 10 females (10.5 per cent) and by one in 20 males (5.0 per cent).

The persons participating in the National Population Survey were asked if they had ever experienced an unwanted touching of "a sex part" of their bodies. These acts were reported by about one in six persons (18.1 per cent) with double the proportion of females (23.5 per cent) as that of males (12.8 per cent) reporting such incidents. In response to the question whether anyone had ever tried to have sex or had forcibly sexually assaulted them, about one in five females (22.1 per cent) and one in 10 males (10.6 per cent) said that they had been victims of these acts.

Sex and Age of Victims

If they had been victims of sexual offences, persons in the National Population Survey were asked how old they were when these incidents had first happened to them. As noted, some persons reported that they had been victims of two or more offences, and in order to preclude a double-counting of reported offences which may have been committed against a person during a single year, only the most serious offence was included in the analysis undertaken.

The findings given in Tables 6.2 and 6.3 list the types of sexual offences experienced by the age of the victim when the act had first occurred. Since some persons did not report either their age or sex, the total number of offences listed in these tables is somewhat smaller than the total of all reported offences.

The majority of the victims of sexual offences were children and youths when these incidents had first happened to them. Relatively few victims were very young children under age seven. It is sometimes suggested that women are primarily the victims of sexual offences. The findings of the National Population Survey indicate that, on average, fewer than one in five persons of both sexes was an adult when he or she was a victim for the first time of an unwanted sexual act. The majority of victims were children and youths between 12 and 18 years-old.

The trends by age were comparable for persons of both sexes. Slightly over half of the female victims of exposers were under age 16; about one in six was

Ages of Female Victims	Female Victims			
	Exposed To	Threatened	Touched	Attempted/ Assaulted
	Accumulative Percentage			
Under age 7	6.5	—	3.1	6.3
7 – 11	27.7	6.9	15.5	22.8
12 – 13	41.3	16.1	28.9	32.2
14 – 15	55.4	31.0	47.5	48.0
16 – 17	66.8	52.8	68.1	69.2
18 – 20	84.2	78.1	83.0	85.0
21 years and older	100.0	99.9	100.0	100.0

Table 6.2

Ages of Males by Types of First Unwanted Sexual Acts Committed Against Them

Ages of Male Victims	Types of First Sexual Acts Committed Against Male Victims							
	Exposed To		Threatened		Touched		Attempted/ Assaulted	
	No.	%	No.	%	No.	%	No.	%
Under age 7	4	5.8	1	3.6	6	5.7	1	2.4
7 – 11	11	15.9	2	7.1	11	10.5	5	12.2
12 – 13	10	14.5	1	3.6	11	10.5	4	9.8
14 – 15	11	15.9	4	14.3	13	12.4	9	21.9
16 – 17	13	18.8	5	17.8	22	20.9	12	29.3
18 – 20	6	8.7	8	28.6	21	20.0	6	14.6
21 years and older	14	20.3	7	25.0	21	20.0	4	9.8
TOTAL	69	99.9*	28	100.0	105	100.0	41	100.0

National Population Survey. Information missing on ages of males for: exposed to (20), threatened (22), touched (23) and attempted/assaulted (65).

*Rounding error.

Table 6.3

Ages of Females by Types of First Unwanted Sexual Acts Committed Against Them

Ages of Female Victims	Types of First Sexual Acts Committed Against Female Victims							
	Exposed To		Threatened		Touched		Attempted/ Assaulted	
	No.	%	No.	%	No.	%	No.	%
Under age 7	12	6.5	—	—	6	3.1	8	6.3
7 – 11	39	21.2	6	6.9	24	12.4	21	16.5
12 – 13	25	13.6	8	9.2	26	13.4	12	9.4
14 – 15	26	14.1	13	14.9	36	18.6	20	15.8
16 – 17	21	11.4	19	21.8	40	20.6	27	21.2
18 – 20	32	17.4	22	25.3	29	14.9	20	15.8
21 years and older	29	15.8	19	21.8	33	17.0	19	15.0
TOTAL	184	100.0	87	99.9*	194	100.0	127	100.0

National Population Survey. Information missing on ages of females for: exposed to (14), threatened (19), touched (42) and attempted/assaulted (95).

*Rounding error.

an adult when she had first been a victim of this offence. The likelihood of a person threatening to have sex with a female was more frequently experienced by adolescents than younger girls. Females under age 21, with the exception of those under age seven, were about equally at risk of being touched on the sexual parts of their bodies and of assailants trying to have sex with them or of actually sexually assaulting them.

About half of the males who reported having been victims of acts of exposure were under age 16 when incidents of this kind had first occurred. Only a small percentage of males said that someone had sexually threatened them and proportionately more of these incidents were reported by older rather than younger adolescent males. Under the age of 21 years, the risk of a male child or youth having been sexually touched was about the same for each age category. About half of the males whom assailants had tried to attack or who had been assaulted were boys under age 16.

Ages of Male Victims	Male Victims			
	Exposed To	Threatened	Touched	Attempted/ Assaulted
	Accumulative Percentage			
Under age 7	5.8	3.6	5.7	2.4
7 – 11	21.7	10.7	16.2	14.6
12 – 13	36.2	14.3	26.7	24.4
14 – 15	52.1	28.6	39.1	46.3
16 – 17	70.9	46.4	60.0	75.6
18 – 20	79.6	75.0	80.0	90.2
21 years and older	99.9	100.0	100.0	100.0

The National Population Survey was designed to obtain information about whether persons had ever been victims of sexual offences and how old they were when such incidents had first happened. While the survey did not focus specifically on the experience of adults who had been victims, this type of information was obtained if such incidents had first been committed against persons when they were age 21 or older. The results of the survey indicate that a majority of the victims of sexual offences were children and youths when these acts had first been committed against them.

Regional Distribution

Although information was not obtained in the National Population Survey about where victims had lived when the offences had been committed, their residence at the time of the survey was reported.

Region	Victims of First Sexual Offences
	Per Cent
Newfoundland/Prince Edward Island	28.3
Nova Scotia/New Brunswick	42.0
Quebec	40.2
Ontario	48.2
Manitoba/Saskatchewan	41.8
Alberta/British Columbia	45.4
NATIONAL AVERAGE	42.1

On the basis of where victims resided in 1983, regional differences occurred in the reported prevalence of sexual offences. While the national average of the proportion of males and females who had been victims was 42.1 per cent, reported incidents occurred in slightly over a quarter (28.3 per cent) of residents living in Newfoundland and Prince Edward Island in comparison to about half (48.2 per cent) of those living in Ontario. The overall findings indicate that in no part of the country can it be said that the problem does not exist. The findings of the National Population Survey show that more effective means of reaching victims and of affording them protection must be developed in all regions of the country.

Intergenerational Trends

Reflecting the changing nature of the values held by Canadians, there has been a more open discussion in recent years about all aspects of human sexual behaviour. Issues once rarely mentioned in public are frequently reported upon by the news media. Because of a heightened awareness of these issues and a growing concern with the occurrence of sexual offences, it is sometimes believed that there has been a sharp increase in the number of violent sexual acts committed. In light of incremental population growth, there is no doubt that through time the volume of these crimes has risen. There is no historical documentation available, however, to determine whether proportionately more persons now than in the past are victims of sexual offences.

With the exception of historical crime statistics, no longitudinal analysis of the actual number of sexual offences committed is feasible. Even so, the findings of the National Population Survey provide a means whereby a comparison can be made of the experience of younger and older persons in this respect. The accuracy of findings dealing with events occurring in the past is

contingent upon the ability of persons to recall precisely the details involved in particular incidents. In general, the findings of psychological studies dealing with learning and memory suggest that an erosion in the ability to recall events increases with the amount of time elapsed. Counter-balancing this trend, however, is the likelihood that persons will recall certain significant events in which they had been involved, such as having been victims of crimes. Because of more emphasis on the teaching of sex education in schools, it is likely that younger persons in comparison to older adults might be better informed and more willing to discuss openly these issues. As a result, to the extent that the passage of time affects a person's accuracy of recall, it is likely that younger persons reported most of the offences committed against them in comparison to older persons who may have under-reported such incidents.

With the exception of youths between 18 and under 21 years-old who proportionately reported more first offences than older persons, the findings in Table 6.4 show that there was no significant variation in these respects for both adult males and females of other ages. Of persons between 18 and under 21 years-old, seven in 10 females (70.2 per cent) and about four in 10 males (38.6 per cent) had been victims of first sexual offences. On average, about half of the adult females of all other ages reported that they had been victims of these offences at least once during their lives. While there was more variation by age with respect to first incidents reported by adult males, on average, less than one in three (30.4 per cent) had experienced an unwanted sexual act.

Table 6.4

Present Ages of Persons Who had been Victims of Sexual Offences

Present Ages of Persons	Sex of Victims							
	Males				Females			
	No Offence Reported		One or more Offences Reported		No Offence Reported		One or more Offences Reported	
	No.	%	No.	%	No.	%	No.	%
Under age 20	43	61.4	27	38.6	17	29.8	40	70.2
21 – 30	202	68.7	92	31.3	145	49.7	147	50.3
31 – 40	205	75.6	66	24.4	125	44.2	158	55.8
41 – 50	107	67.3	52	32.7	73	45.1	89	54.9
51 – 60	66	64.7	36	35.3	56	49.1	58	50.9
61 years & older	60	70.6	25	29.4	45	49.5	46	50.5
TOTAL	683	69.6	298	30.4	461	46.1	538	53.9

National Population Survey. Information missing on age for 21 males and 7 females.

Since the proportion of persons under age 21 included in the National Population Survey is small, the experience of this group may not indicate an

evolving long-term trend resulting in a higher prospective incidence in the occurrence of sexual offences. More research is warranted to assess the nature of the risks experienced by persons in this age group in comparison to those of children and adults.

The main findings of the National Population Survey with respect to the reporting by adults of first sexual offences are that:

1. As many of the older as of the younger adults said that they had been victims of sexual offences.

2. For persons of all ages who were victims, a majority of the first incidents of this kind had happened to them when they were children or youths.

Based on reports of a sample of adults of all ages, the findings of the National Population Survey are congruent with the findings of the Committee's review of historical crime statistics for sexual offences (Chapter 13, *Historical Statistical Trends*). In both instances, each drawing on a different source of information, the findings indicate that in recent decades there has been no statistically appreciable increase in the incidence of sexual offences committed against Canadians. There is no doubt, however, that the number of these crimes is alarmingly high.

The best evidence available to the Committee suggests that the volume of these crimes in relation to population growth has remained at a relatively constant level for some time. In this respect, the major change that appears to have occurred is not so much an alteration in the incidence of these offences, but the fact that Canadians as a whole are becoming more aware of a deeply rooted problem whose dimensions have not significantly shifted in recent decades. More persons and community action groups are now seeking to redress this situation. The Committee's findings show that the principal victims of first sexual offences are children and youths, and that, while proportionately females are twice as often victims as males, members of both sexes are victims of these crimes.

Seeking Assistance

The results of the National Population Survey confirm the trends noted in the personal accounts of victims (Chapter 5) that only a small fraction of first sexual offences against persons is reported to the authorities. While this fact was previously realized, its proportions had not hitherto been documented on the basis of a representative national sample of the Canadian population. In the National Population Survey, persons who had been victims were asked if they had reported these incidents and whom they had told. If they had not sought assistance, they were asked why they had not sought help. The principal findings from the national survey show that:

1. Proportionately more female than male victims of first sexual offences had sought assistance.

2. Assistance was more often sought in relation to more serious than more minor sexual offences.

3. The primary sources of assistance involving the public services (beyond victims telling family members and close friends) were medical services and the police. Few victims resorted to other public services or special programs, such as: distress or hot lines, child protection agencies, rape crisis centres or women's hostels, school staff, public and mental health services, lawyers or criminal injuries compensation boards.

4. Most of these incidents were not reported by victims because they felt these matters were too personal or sensitive to divulge to others, and because many of them were too ashamed of what had happened.

Female victims were more than twice as likely (23.8 per cent) as male victims (11.1 per cent) to have sought assistance. However, a majority of victims of both sexes had not done so. For three in four female victims and about nine in 10 male victims, these incidents had been kept as closely guarded personal secrets.

Table 6.5

Victims Seeking Assistance by Types of First Sexual Offences

Type of First Sexual Offence Against Victim	Victims Seeking Assistance					
	Males			Females		
	Number of Victims	Number of Victims Seeking Assistance	Proportion of Victims Seeking Assistance	Number of Victims	Number of Victims Seeking Assistance	Proportion of Victims Seeking Assistance
	Number	Number	Per Cent	Number	Number	Per Cent
Exposed to	89	2	2.5	198	20	10.1
Threatened	50	2	4.0	106	15	14.2
Touched	128	13	10.2	236	30	12.7
Attempted/ assaulted	106	17	16.0	222	63	28.4

National Population Survey. Non-accumulative results for specific types of sexual offences with proportions of victims seeking assistance calculated on actual totals of male (307) and female (538) victims respectively.

With respect to the type of sexual offence committed, a gradient occurs: fewer of the less serious incidents were reported and assistance was more often sought by victims of more serious assaults. Males were involved in few incidents of exposure and virtually none reported them. Although proportionately four times as many females as males reported exposures, nine in 10 females did not seek assistance following these incidents.

More victims of both sexes reported threats than exposures with about one in seven females (14.2 per cent) telling another person about incidents of this kind. About one in eight females and one in 10 males sought assistance as a result of someone having "touched the sex parts" of their bodies when they had not wanted this to happen.

The offences for which victims had proportionately sought more assistance were those where a person had attempted to have vaginal or anal intercourse or where victims had been sexually attacked and forced to have vaginal or anal intercourse. More than one in four female victims and one in six male victims had reported these types of incidents.

In considering where victims seek assistance, information can be obtained either from the records of services and agencies or from accounts reported by victims. On the basis of information obtained from the former source, it might appear that a substantial number of public services and community agencies is being contacted by victims. If the latter type of information is drawn upon, such as that obtained in the National Population Survey, then it is evident that while many different programs had been contacted, there were only three or four principal sources of assistance which had consistently been turned to by most victims.

Of the victims who had sought assistance, about half of the females (50.6 per cent) and about a quarter of the males (27.6 per cent) had told a family member or a friend. The police were contacted by one in 11 female victims (9.0 per cent) and by about one in 14 male victims (6.9 per cent). About the same proportion of both males and females seeking assistance, one in seven, either had visited a physician in community medical practice or the outpatient department of a hospital. The only other public services turned to for assistance, in each instance by only between two and four per cent of victims, were child protection services and school teachers or counsellors. All of the other types of helping services either were not turned to at all, or by less than two per cent of the victims who sought assistance. These seldom used services included: religious leaders (clergymen, priests, rabbis); help or distress lines; lawyers; public health and mental health services; sexual assault centres, rape crisis centres and women's hostels; and criminal injuries compensation boards.

Some of the services which were infrequently turned to by victims, such as help or distress lines, sexual assault/rape crisis centres and women's hostels, have only recently been established and this fact partially explains why they may have been proportionately less used, particularly by older persons who had been victimized when they were children. Other types of infrequently used services, however, included some which are generally well established and which constitute a recourse for persons to turn to in times of distress or need. Services of this type include those provided by religious leaders, lawyers, public health and mental health workers, school teachers and counsellors, child protection workers and criminal injuries compensation boards.

Not Seeking Assistance

Each person in the National Population Survey who had been a victim of a sexual offence was asked if he or she had not sought assistance, "Why didn't you tell anyone or report this?"

Reason Incident Not Reported	Males	Females
Too personal a matter to tell anyone	1	2
Too ashamed it happened	3	1
Afraid it wouldn't be believed	7	4
Too young to know it was wrong	6	7
Felt partly responsible it happened	6	5
Wasn't important enough to do anything	2	8
Didn't bother me that much	5	9
Didn't want to hurt other members of family	7	6
Didn't want to hurt the person who did it	4	7
Afraid of person who did it	8	3
Threatened not to tell by person who did it	9	8
Too angry to do anything	9	8
Other reasons	10	10

The reasons most frequently cited for not seeking assistance were that: the victims were too ashamed of what had happened; they felt it was too personal a matter; for females, fear of the person who had committed the act; and for males, the event wasn't important enough to do anything about it. Although over four in five of the sexual offences reported in the National Population Survey had been committed against persons when they had been children and youths, few victims said that they had not sought assistance because they had been "too young to know it was wrong". The written comments of persons in the National Population Survey explain in their own words why most of them had refrained from seeking assistance.

- *34 year-old preschool worker.* "I was approached when about 13 by a family friend and fondled on nights when he realized my parents would be out. If I had been able to discuss it with my parents and known that they would do something about it, I would have told. I felt it would only have been more trouble".
- *56 year-old nurse.* When she was 12, her middle-aged uncle "petted my breasts and vagina. It was many years ago. I suppose I should have told my Mother".
- *39 year-old manager.* When he was 14, he was "delivering papers - collecting money - and this man asked me in, and just made a quick grab with his hand at my crotch. I told no one. A young person should be told what to do, and whom to see for any sexual violation".

- *45 year-old mother.* When she was seven, a 15 year-old boy and his friend "held me down and removed my pants and underwear for a look and feel. I escaped. My father spoke to him and his family and threatened to call the police if it happened again".
- *20 year-old secretary.* When she was 13, a family friend attempted to rape her: "If I was older and not made to feel so ashamed of it, I would have told the proper authorities, but at the time, I was so young and very ashamed of the whole thing".
- *18 year-old clerk.* When he was 12, a delivery man in his twenties "lay on top of me and masturbated himself". He told his mother and the man was charged by the police. "No harm was done to me, but the perpetrator was probably done harm by the police. The family doctor only hurt me by probing my anus. It would have been better for all concerned if I hadn't reported it".
- *60 year-old grandmother.* When she was 13, her father had fondled her breasts and crotch. She told no one. "I felt it was O.K. to do this - it was done only in fun".
- *36 year-old nursing aide.* When she was eight, "we were play-acting. An older boy placed a pocket-watch in my pubic area. By making little of the incident, I believe no harm was done. Sometimes, exploiting things does more damage than respecting the privacy of them".
- *51 year-old salesman.* When he was 10, "a man in a theatre reached down and grabbed my penis during the show. There is no defence in a darkened theatre. The show never had sexual overtones. I guess the guy was sick".
- *34 year-old mother.* When she was 13, she was threatened several times by a 19 year-old employer. "The guy tried to put his finger in my vagina and put his hands all over my body. After that, he told me that if I told, he would really get me the next time, so I didn't tell anyone. I thought all males were animals. I saw a doctor twice weekly. People like me feel too ashamed to tell or too scared to tell. Society, whether they believe it or not, are too quick to blame the girls".
- *21 year-old student.* When she was 13 she was grabbed on her breasts and crotch by her 15 year-old date who threatened to have sex with her. "My boyfriend had several bottles of beer. His friend encouraged him to try drugs. Everyone was experimenting with sex, so I felt it was a normal reaction for him". She told no one about the incident.
- *48 year-old teacher.* When he was 19 "while sleeping with a male friend, he manipulated my penis. No one was told. I was naive and ignorant about such matters. I had no way of dealing with it. Many years later, the person was hospitalized off-and-on in a mental institution".
- *40 year-old clerk.* When she was eight, her step-father regularly had intercourse with her. She subsequently had a child. Because she was afraid, "the family kept it very quiet. I feel mothers should be at home with their children, instead of working or running around".
- *20 year-old secretary.* When she was between 12 and 13 years-old, "a girl friend's father touched her friends while pretending to read us stories. I might have known how to deal with this situation if I had been more aware as a child of sexual abuse and had been told by my parents or teachers".

- *44 year-old salesman.* When he was about four years old, he was "sexually molested by a baby-sitter" - an 18 year-old female. "As a small child, this left a bad memory. Keep care of your kids yourself. Don't farm them out to others".
- *36 year-old mother.* When she was 10, her "stepfather threatened to make me go to bed with him. I didn't tell 'cause I was scared to death". He fondled her vagina. "I was really upset, and felt someone should notice what was happening to me. Finally, I ran away from home".
- *41 year-old researcher.* When she was 15, her next door neighbour "was physically intimate with me without vaginal entry. I never told anyone. I thought I was being grown-up. I was ashamed and unable to tell anyone. Whatever happened, my father would have been ashamed and have blamed the man. What I didn't understand, until recently, was the extent of my own sense of complicity".
- *30 year-old manager.* When he was 19, a 45 year-old "homosexual picked me up", threatened him and felt his penis. He told his friends. "They beat the hell out of him. Homosexuals are more accepted now. They should be allowed to do what they want together. If they try force, they should be charged with rape and punished".
- *19 year-old student.* When she was 13, she was sexually attacked by two students (ages 16 and 17) and two adults (a gas station owner and a retired man). They sexually fondled her, kissed her crotch and forced their fingers into her vagina. "I was very young. By the time I realized what was happening, I tried my hardest to get out of the situation. I managed to escape before damage was done. I didn't say anything to anyone because I was so embarrassed".
- *30 year-old mother.* When she was 14, "an over zealous date (a 21 year-old male) made persistent physical contact. My situation is a fairly common problem. But it was extremely frightening. Fortunately, I was able to talk freely with my mother. I do feel that too little is said against this 'normal' behaviour".
- *30 year-old physician.* When he was 14, a 55 year-old acquaintance fondled his penis and masturbated himself on top of him. "At the time I was 14, but I feel I handled the situation well enough. The offender learnt his lesson".
- *42 year-old clerk.* When she was nine, a cousin fondled her breasts and crotch. "A cousin tried to fondle me. He held me down and I fought back". She told her mother, but "because of ignorance, nothing was exposed - to keep peace in the family".
- *22 year-old mother.* When she was 13, a farmer who was a close family friend, "touched my private parts when I was waking up from a sleep. I think that more public awareness would have helped. I would not have felt as totally alienated if I had had some support, some place to turn to without social stigma attached to making it public, including the family".
- *43 year-old planner.* When he was 16, he had been "approached in a public washroom by a homosexual" who fondled his penis. "I should have reported the incident to the police to prevent other assaults to persons".
- *42 year-old mother.* When she was nine, she was sexually fondled by three males aged 17, 30 and 30 years-old. They also attempted to insert their

penises in her anus. "I never told. If I had known, I could have told someone and not gotten into trouble for telling. And if I had been old enough to realize the persons doing those things needed help themselves to realize they had a problem".

- *23 year-old farm worker.* When he was 14, an older teenager had tried to force his penis into his anus. "This person was a macho guy, a body builder and not the sort one would suspect". Because "no harm was done", he didn't report the incident.
- *56 year-old mother.* When she was 13, her 46 year-old uncle tried to rape her. "I had no one to talk to and I did not understand. My parents had deceased. He threatened to throw me on the streets".
- *20 year-old student.* When he was 14, a neighbour who was a butcher "tried verbally to force me to submit to him". A friend and the school staff were told. "The school mentioned it to the police and to friends in the community".
- *30 year-old manager.* When she was 10, a 16 year-old second cousin attempted to rape her. "My cousin told me we were playing a game". She told no one about the incident.
- *48 year-old clergyman.* When he was 10 years-old, a 14 year-old boy forced his penis into his anus. He didn't tell anyone because "I didn't want to cause any trouble".
- *35 year-old writer.* When she was nine, her "genitals were touched under verbal disguise of something else at that age by a farm helper while I was on vacation. I don't really think I could have been helped, unless I had been made aware of sexual advances at that young age. At that time, you just weren't aware".

The principal reasons why most of these persons had not sought assistance underscore the nature of their fears and the stigma associated with having been a victim of a sexual offence. A recurring theme in some of these accounts is the sense of uncertainty about what constitutes acceptable or unacceptable sexual activities.

Reflecting changes in social values, sexual customs are in transition about which partner is expected to initiate sexual activities, about which types of acts are acceptable, and about the nature of the signals connoting agreement, feinted reluctance or refusal. These are not situations in which the terms of a contract are specified in advance. Many victims found themselves in situations in which they were frightened, embarrassed or ashamed. It is evident from these accounts that a sharp and absolute distinction must be taught to children concerning their involvement in sexual activities in which there is any element of authority, harassment, exploitation or force.

In relation to the reasons cited by victims why they did not seek assistance, it is evident that for most of them, their decisions had little, if anything, to do with the types of services available, but revolved around deeply-held personal concerns. In its research, the Committee found no firm evidence suggesting that a majority of victims did not turn to public services because they feared the staff of these programs. The findings suggest that what the victims feared

most was the disclosure of what had happened, particularly when this meant telling family members and close friends.

Summary

On the basis of the results obtained by the National Population Survey, it was found that:

1. About one in two females and one in three males had been victims of sexual offences.
2. Children and youths constitute a majority of the victims. About four in five of the victims were under age 21 when the offences were first committed against them. Fewer than one in five persons was victimized for the first time when he or she was an adult.
3. A high proportion of persons in all parts of the country reported having been victims of these offences.
4. On the basis of offences reported by adults of all ages, it appears that there has not been a sharp increase in recent years in the incidence of sexual offences.
5. A majority of sexually abused victims did not seek the assistance of public services, and when such help was sought, physicians and the police were the groups most frequently contacted.

Sexual offences are committed so frequently and against so many persons that there is an evident and urgent need to afford victims greater protection than that now being provided. The findings of the National Population Survey clearly show the compelling nature of the fears and stigma associated with having been a victim of a sexual offence.

Elsewhere in the Report, the Committee recommends changes in legislation intended to strengthen the legal protection and rights of children and youths who are victims of sexual offences. These recommended changes in legislation constitute an essential legal framework to afford better protection for children and youths. These measures, if taken by themselves, would be insufficient to contain this widespread problem.

What is required is the recognition by all Canadians that children and youths have the absolute right to be protected from these offences. To achieve this purpose, a major shift in the fundamental values of Canadians and in social policies by government must be realized.

The Committee is aware that these basic changes will not come about easily or quickly. If no action is taken, or if only token programs are initiated, the risk that children and youths will continue to be sexually abused will remain intolerably high. In this respect, one of the Committee's major recommendations, given in Chapter 3, is that the Office of the Commissioner which we recommend be established have as one of its principal responsibilities, in co-operation with the provinces and non-governmental agencies, the development, co-ordination and implementation of a continuing national program of public education and health promotion focussing on the prevention of sexual offences and the protection of young children, youths and adults who are victims.

Chapter 7

Dimensions of Sexual Assault

Drawing on the results of four national surveys, this chapter provides a summary of who the sexually assaulted child is and the circumstances involved in the assaults committed. The results given here pertain only to *sexual assaults* which, by definition, involved any type of sexual touching of the child by another person. The results on offences where there was no touching of the child are given in Chapter 8, *Acts of Exposure.* This separation of findings is made in light of the legal aspects of these offences and to preclude the listing of results which would be misleading were the findings for all types of sexual offences aggregated together.

Provincial child welfare statutes establish different age limits with respect to services and protection afforded to children. Information reflecting the operation of these statutes was collected in the national surveys in relation to the experience of children who were 16 years of age and older. The findings for youths between age 16 and under 21 years-old are reported in the review of sexual offences specifying either higher age limits or no age limits and these results are given in Chapter 24, *Police Investigation*, and Chapter 25, *Elements of the Offences*. In this chapter, in order to provide a common denominator as a basis upon which to review the experience of sexually assaulted children, *only findings for children age 15 or younger are considered.*

The personal accounts received by the Committee (Chapter 5, *Personal Accounts*) and the findings of the National Population Survey (Chapter 6, *Occurrence in the Population*) show that a majority of the victims of sexual offences either do not contact or are unknown to those public services whose responsibilities include the provision of assistance and protection for them. When victims seek help, they typically turn to only one of two or three services, most often to physicians or hospitals, the police, and less frequently to social services, including child protection agencies. As a result, the experience of sexually assaulted children known to these services only partially reflects the dimensions of the actual occurrence of these offences committed against children and youths. The offences reported to these services or identified by their professional staff constitute, however, victims for whom assistance can be provided, and upon whose behalf, legal action can be taken. In this respect, the

public services cannot respond to the needs of victims which are not reported, or which are not identified by the work of their professional staff.

Reflecting differences in the types of offences committed, the identities of assailants, where the incidents occurred, the decisions made by victims and their families, and the nature of the mandate of each public service, there is a selective winnowing of the types of victims known to physicians, the police and child protection workers. In undertaking its research, the Committee was afforded the unusual opportunity to obtain extensive information about sexually abused children and youths from each of these public services.

When it started its review, the Committee found that there was insufficient documentation available about the types of public services and voluntary community agencies to which victims may turn for assistance. On the basis of its review of research and its meetings with officials and the professional staff of programs, the Committee focussed its research attention on the documentation of the experience of victims known to public services having an official mandate with respect to these problems. As a result, the Committee undertook national surveys involving police forces, hospitals and child protection services. In this regard, the findings of the National Population Survey confirm that these services are those which are most frequently turned to by victims of sexual offences.

Benefitting from the considerable co-operation extended by these public services across Canada, the Committee assembled information from each of these three principal sources of assistance to victims. An unusual aspect of the findings obtained is that a comparison can be made between them in relation to the circumstances of the victims, the types of sexual offences committed and the actions officially taken. The detailed findings obtained in these surveys are subsequently presented in the Report. In this chapter, an overview is given of the main dimensions of sexual assaults against children and youths.

In undertaking the national surveys, the Committee sought, where it proved to be feasible, to obtain uniformly comparable types of information. This purpose was not fully realized, since the collection of findings was partially contingent upon the completeness of the information available in records or case files and upon the methods used by different services to identify and classify reported sexual offences. In addition, because the needs of the victims served differ and the types of services provided vary, each public service selectively specializes in somewhat different types of assessments and in the provision of different forms of assistance.

Sex of Victims

Sharply different findings have been reported in the research on sexual offences about the proportion of girls and boys who are victims. Although the reported estimates have ranged from between three in five and nine in 10 victims being girls, the latter is the most widely cited ratio. Some reports, such as

that of the Metropolitan Toronto Chairman's *Special Committee on Child Abuse* (1982) have concluded that virtually all victims are girls. "Since the overwhelming number of child sexual abusers are male (97 per cent) and their victims female (90 per cent), we have chosen to refer to female victims and male offenders in this report."[1] At the other end of the scale, the Metropolitan Toronto Board of Commissioners of Police's *Task Force on Public Violence Against Women and Children* (1983) found that three in five victims were girls.[2]

One of the most comprehensive and widely known reports, the 1957 British study on *Sexual Offences*, found that of sexual assaults reported to the police, about two in three (67.8 per cent) were committed against girls and one in three was against boys (32.2 per cent).[3] When acts of exposure committed against girls are added to the number of sexual assaults against children of both sexes, then about three in four (74.0 per cent) of all of the sexual offences reported in the 1957 British report had been committed against girls and in one in four incidents (26.0 per cent), boys were victims.

The findings drawn upon here from the Committee's national surveys with respect to the gender ratios of victims refer only to *sexually assaulted* children who were under age 16. Since the experience of older children and acts of exposure are excluded, these findings differ somewhat from those cited elsewhere in the Report.

National Surveys	Sexually Assaulted Victims Under Age 16	
	Males	Females
	Per Cent	Per Cent
National Population Survey		
(i) touched	30.8	69.2
(ii) attempted assault/assault	23.8	76.2
(iii) average of (i) and (ii)	28.2	71.8
Police Force	22.3	77.7
Hospital	13.7	86.3
Child Protection	14.4	85.6

In the National Population Survey, about three in four persons who had been sexually assaulted for the first time as children were females (71.8 per cent) and about one in four (28.2 per cent) was a male. When these results are compared to the gender ratios of the sexually assaulted children known to public services, it is apparent that a higher proportion of girls than that of boys was known to these agencies. The closest approximation to the National Population Survey's gender ratio occurs in cases investigated by police forces. In the instance of both the National Hospital Survey and the National Child Protection Survey, the proportion of sexually assaulted girls was approximately a fifth higher than that in the National Population Survey.

The proportion of girls to boys who were the victims of sexual assaults documented in the four national surveys is somewhat lower than the most commonly cited estimate of nine in 10 victims being girls. On the basis of the findings of the National Population Survey, **it appears that about three in four victims are girls and that one in four is a boy.** The results of the national surveys show that different gender ratios of victims are known to the public services with these findings having social policy implications with respect to the scope and types of services provided to victims. While the central thrust of public concern has often focussed on the plight of young female victims, the results indicate that services providing assistance and protection for young male victims are also warranted.

Age Distribution

The summary national statistics about the age and sex of sexually assaulted children tell us little about the anguish and fear they experience as victims. The statistics do, however, clearly indicate that **a large number of victims were very young children and that there are sharp differences proportionately by age between how many children are victims and how many are known to public services.**

Age	Female Victims			
	National Population Survey	National Police Force Survey	National Hospital Survey	National Child Protection Survey
	Per Cent	Per Cent	Per Cent	Per Cent
Under age 7	9.2	17.9	27.1	22.0
7 –11 years	29.4	29.1	34.9	39.9
12–13 years	24.8	20.7	15.9	21.6
14–15 years	36.6	32.3	22.1	16.5
TOTAL	100.0	100.0	100.0	100.0

Depending upon which public service had been contacted, between twice and three times the proportion of very young female victims were reported as that of females in the National Population Survey who were sexually assaulted when they were under age seven. In comparison with the findings of the National Population Survey, a disproportionate number of sexually assaulted patients treated at hospitals was younger girls while the proportion of older girls known to the police and child protection services more closely approximates the age distribution found in the National Population Survey.

In the National Population Survey, of males who had been sexually assaulted when they had been younger than 16 years-old, about one in eight at the time (11.9 per cent) had been a boy under age seven. In contrast, male victims in this age group were about two and a half times as likely to be known to

Age	Male Victims			
	National Population Survey	National Police Force Survey	National Hospital Survey	National Child Protection Survey
	Per Cent	Per Cent	Per Cent	Per Cent
Under age 7	11.9	29.0	28.3	38.0
7 –11 years	27.1	38.5	46.3	32.0
12–13 years	25.4	14.2	20.9	18.0
14–15 years	35.6	18.3	4.5	12.0
TOTAL	100.0	100.0	100.0	100.0

public services. While on the basis of the findings of the National Population Survey, it appears that the proportion of sexually assaulted males increases with age, the reverse trend is true in relation to the proportion of older male victims known to the police, hospitals and child protection services. The findings suggest that in addition to a victim's sex, his or her age appears to influence whether the public services are contacted for assistance.

Time of Occurrence

Because many sexual assaults had been committed sometime well before public services had been notified, information about exactly when the incidents had occurred was either missing or incompletely recorded in the files and charts drawn upon in two of the national surveys and this type of information was not obtained in the National Population Survey. In this regard, only the findings obtained in the National Police Force Survey are presented.

Because of the effects of inclement weather and the times of the year when children are at school, it is not surprising that a large number of sexual offences against children reported to the police occur during the daylight hours and the spring and summer months. The largest number of sexual assaults reported to the police occurred during the spring and summer. The seasonal distribution of the offences was about the same for male and female victims.

Seasons	Per Cent Males	Per Cent Females
Spring	31.1	27.6
Summer	32.4	34.6
Autumn	18.5	22.9
Winter	18.0	14.9

In the National Police Force Survey, of the occurrences for which the time of the incident was given (69.5 per cent), over half (56.9 per cent) had

occurred during the hours of daylight. About two-thirds (65.6 per cent) of the assaults against boys in comparison to slightly over half (55.2 per cent) of those against girls were committed during the morning and afternoon. Over a quarter of all assaults took place during the evening between 6 p.m. and 10 p.m. One in nine boys and one in six girls reported that the offences had occurred between 10 p.m. and 5 a.m.

Time of Day	Per Cent Males	Per Cent Females
Morning (5 a.m. — 12 p.m.)	12.0	12.2
Afternoon (12 p.m. — 6 p.m.)	53.6	43.0
Evening (6 p.m. — 10 p.m.)	23.0	28.9
Night (10 p.m. — 5 a.m.)	11.4	15.9

There was a relatively uniform distribution between the day-of-the-week on which the sexual assaults were reported to have occurred.

Days of Week	Per Cent Males	Per Cent Females
Sunday	12.2	13.2
Monday	14.8	12.8
Tuesday	14.3	14.4
Wednesday	15.0	14.2
Thursday	9.4	13.5
Friday	13.9	15.6
Saturday	20.4	16.3

For both male and female victims, there was a modest peaking in the reporting to the police of sexual assaults which had occurred on Saturday.

Where the Offences Occurred

In the pretest of the research protocol for the National Police Force Survey, a large number of locations was identified where the offences had occurred. Rather than introducing a distinction between private and public places at the stage of collecting this information, a full listing of all types of locations was established. In the Committee's analysis, a *private place* was operationally defined to include the following locations.

1. House of the victim
2. Apartment of the victim
3. House of the suspect

4. Apartment of the suspect
5. House of the third party:
   (i) neighbour
   (ii) friend
   (iii) parents (living with the victim)
   (iv) relatives
   (v) employer
   (vi) acquaintance
   (vii) babysitter
   (viii) youth worker
   (ix) other
6. Apartment of a third party (categories i-ix, as listed under number 5)
7. Miscellaneous private places:
   (i) hotel or motel room
   (ii) cottage
   (iii) trailer
   (iv) shed or garage
   (v) abandoned house

All other locations where the sexual assaults occurred were defined as public places, and to permit a comparison with the results of the 1957 British study on *Sexual Offences*, its classification of public places was adopted.[4] A review of the legal significance of public and private places is given in Chapter 25, *Elements of the Offences*.

The "street-proofing" of children which would entail teaching them to be cautious in their encounters with strangers has been proposed by some observers as a means of reducing the occurrence of sexual assaults against young victims. In relation to these proposals, the most significant finding documented in Table 7.1 concerning **the location of sexual assaults committed against children is that well over half (55.4 per cent) occurred in the homes of victims or suspects.** These are places which are usually considered to be safe and which are not open to scrutiny by the public. The public places where the assaults were committed were potentially accessible to all persons. Among the large number of public places where both sexes were about equally at risk of being assaulted were open spaces, amusement centres, vehicles and a number of buildings accessible to the public. Girls were about twice as likely as boys to be attacked on the street, while boys were twice as likely as girls to be attacked in a number of 'other' places (e.g., beaches, construction sites, parking lots, summer camps).

The findings of the National Police Force Survey contrast with those of the 1957 British study which also drew on police records. In the British survey, only a fifth (18.4 per cent) of the sexual assaults against children were committed in the homes of the victims or suspects. In comparison to the Canadian experience, the British study found: over twice as many offences occurring in open spaces; seven times more in public conveniences; 10 times more in places of amusement; and considerably more in a variety of public buildings. The dif-

Table 7.1

Location of Assaults

Location	Males		Females		Total	
	Number	Per Cent	Number	Per Cent	Number	Per Cent
Open Spaces						
Parks, wooded areas, vacant lots	106	15.2	338	14.1	444	14.3
Streets						
Laneways, bus stops, bridges, subway stations	39	5.6	265	11.0	304	9.8
Houses						
Homes of victims	120	17.2	698	29.0	818	26.4
Homes of suspects	217	31.1	468	19.5	685	22.1
Homes of third parties	31	4.4	116	4.8	147	4.7
Other private locations	13	1.9	55	2.3	68	2.2
Public Conveniences	16	2.3	8	0.3	24	0.8
Theatres						
Billiard halls, arcades, movie houses	6	0.9	20	0.8	26	0.8
Other Buildings						
Apartment corridors, church halls, corner stores, elevators, libraries, museums, restaurants, shopping malls	68	9.7	230	9.6	298	9.6
Vehicles						
Buses, cars, school buses, subways, taxis	36	5.2	119	4.9	155	5.0
Other Places						
Beaches, bridges, construction sites, day care centres, gas station, homes for disturbed children, hospitals, parking lots, places of work, summer camps, YMCA	46	6.5	88	3.7	134	4.3
TOTAL	698	100.0	2405	100.0	3103	100.0

National Police Force Survey. Children under 16 years.

ferences between the findings of the two studies may be attributable to the wide span of time between them, the different climates of the two nations, or may reflect that different customs and circumstances were involved in committing these types of offences (e.g., inviting persons into homes, the relative accessibility of private places).

In each of the three national surveys of sexually assaulted children and youths known to public services, information was sought with respect to whether the victim and assailant lived in the same household. Since not all suspects related to victims lived in the same household, this classification differs from the listing of the type of association (e.g., family, acquaintance, stranger) between victims and assailants.

National Survey	Victim and Suspect Living in Same Household	
	Males	Females
	Per Cent	Per Cent
Police Force	9.7	20.8
Hospital	27.0	42.1
Child Protection	41.7	53.3

In each survey, it was found that proportionately more girls than boys who were victims had been living in the same households with their reported assailants.

The early research on the occurrence of crime concluded that proportionately more of the poor than the affluent had crimes committed against them and that they in turn committed a disproportionate number of all offences. These conclusions have been rejected as creating a harsh and negative stereotype about the criminality of the poor. Because there is an inverse and selective reporting of crime along class lines and because much of the work of the helping services is geared to assist the poor, some observers assert it is spurious to conclude that the poor experience more of these problems than other persons.

These issues raise a number of significant ethical and factual considerations. Inherent in the collection of information about criminal offences is the dilemma of the propriety of identifying certain types of social differences. Where this is done in the analysis of certain types of offences, the results obtained may serve to engender and fuel prejudices about certain groups. At the level of the factual documentation of cultural and class differences which may influence the distribution of crime, there appears to be little in the way of firm information available for Canada. These items are not routinely collected or included in official statistics.

Most of the studies focussing on sexual offences either have ignored these issues or have dealt with them cursorily. Among the few studies which have obtained such information, it has variously been concluded that either no dis-

tinctions occur along class and cultural lines, or that the members of certain minority groups, many of whom are poor, are at a greater risk of being sexually assaulted than persons in other walks of life. In one component of its research, the Committee obtained information about whether persons lived or did not live in government subsidized housing, a finding which provides a partial measure of the level of family income. Prior to carrying out the National Police Force Survey, a draft research protocol was pretested using the general occurrence records of the Metropolitan Toronto Police Force. During this pretest, a full listing was made of the addresses of: the children reported to have been sexually assaulted; the suspected offenders, when such information was known; and the places where the offences were reported to have occurred. The addresses were compared to the listings of all types of government subsidized housing in Metropolitan Toronto (federal, provincial and municipal).

For the three years between 1979-81, the total number of sexual assaults reported to the Metropolitan Toronto Police Force was 790 cases (189, boys; 601, girls).

Type of Residence	Sex of Victims			
	Males		Females	
	Number	Per Cent	Number	Per Cent
Victim lived in public housing	63	33.3	283	47.1
Suspect lived in public housing	42	22.2	202	33.6
Offence occurred in public housing	45	23.8	203	33.8

- *Children Living in Public Housing.* Of the total of 790 sexual assaults, 43.0 per cent of the children lived in public housing. One third of the boys (33.3 per cent) and almost half of the girls (47.1 per cent) lived in these locations.
- *Suspects/Offenders Living in Public Housing.* Of the incidents where the addresses of the assailants were known, a fifth (22.2 per cent) of the assaults against boys and a third (33.6 per cent) against girls had been committed by persons living in public housing.
- *Location of Offences.* About a third (31.4 per cent) of all sexual assaults committed against children reported to the police in Metropolitan Toronto either took place in the buildings or the vicinity of government subsidized housing. About a quarter of the assaults against boys (23.8 per cent) and a third of those against girls (33.8 per cent) occurred in these locations.

Because considerable time was required to match the addresses of each victim and suspect with the listings of government subsidized housing, it was not feasible to replicate this component undertaken in the pretesting of the draft research protocol in the full national survey. The trends noted for Metropolitan Toronto, however, warrant further research investigation.

These findings cannot be extrapolated to provide an indication of what may happen elsewhere in Canada nor do they confirm that there is an association between poverty and the occurrence of sexual offences. They accord, however, with the conclusions of the Kinsey report on *Sexual Behaviour in the Human Female*. In that study of 4441 American females, it was concluded that:

> Approaches had occurred most frequently in poorer city communities where the population was densely crowded in tenement districts . . . we would have found higher incidences of pre-adolescent contacts with adults, if we had had more cases from lower educational groups.[5]

The results of the in-depth review of the locations of sexual offences against children and youths reported to the police and occurring in Metropolitan Toronto between 1979 and 1981 show that for persons who committed sexual offences, public housing units appear to constitute an easily visible target where a large number of children live in the same location. To the extent that a comparable degree of visibility may occur in other locations where many children live and may be readily accessible, special attention in this regard may be warranted in programs of education to inform children and their families about the risks of unwanted sexual approaches and about what to do when these occur.

Types of Sexual Acts

An assortment of definitions of child sexual abuse and sexual offences against children has been used in research reports, official crime statistics, the medical classification of diagnoses and provincial child welfare legislation. None of these typologies, some of which are widely used as the basis for the reporting of statistics on child sexual abuse, identifies the full range of specific types of sexual acts which may be committed against children. Because each system classifies the information obtained differently, a direct comparison of the findings obtained from these sources is effectively precluded.

Some research studies, for instance, have focussed on only one sexual act, such as rape or the catch-all category of pedophilia, while others, under the heading of sexual assault, have grouped together all offences, including acts of exposure. In some instances, terms having precise legal meanings have been operationally redefined. Rape, for example, has been broadened in some studies to include all acts of oral, anal and vaginal penetration and the legal meaning of incest has been extended to incorporate all types of sexual acts committed against the child by all family members whether they are blood relatives or persons unrelated to the child living in the same household. Furthermore, it has been a common practice in the research and the official statistics of public services to group together either broad categories or all types of sexual acts without regard to their behavioural distinctions or their legal significance.

In developing its classification of the different types of sexual contacts between persons, the Committee sought to ground this listing on the full range

of sexual acts which actually may occur. In this regard, the Committee drew upon: the types of sexual acts specified in the sexual offences in the *Criminal Code*; the general research literature on sexual behaviour and offences; and a review of the sexual offences against children reported for a year to the Metropolitan Toronto Police Force. The listing derived from these sources was reviewed to ensure that all sexual acts prohibited by the *Criminal Code* were separately identified and that separate categories were established for each of the most commonly occurring acts. The revised classification was used in each of the national surveys conducted by the Committee.

The inclusion of the classification of sexual acts in the National Population Survey served two purposes, the first being to provide an estimate of the occurrence in the population of unwanted sexual acts, and the second being to establish a baseline with which to compare the findings obtained in the national surveys of public services. The classification of unwanted sexual acts is divided into two broad categories distinguishing between acts of exposure, or actions involving no touching of the person, and sexual assaults, or acts involving any type of sexual touching of the person. The latter category for which findings are given here includes contacts between persons ranging from the touching, fondling and kissing of the parts of the body to oral, anal and vaginal penetration by a penis, finger or object. (The findings on acts of exposure are given in Chapter 8).

The detailed specification of types of unwanted sexual acts obtained in the National Population Survey provides a basis for estimating their occurrence in the population. The results indicate that a sizeable proportion of Canadians, involving over three times more females than males, has experienced at least once, different acts of sexual molestation entailing the touching, fondling or kissing of breasts, buttocks or genital parts of the body. The unwanted licking or sucking of a person's vagina, penis or anus has occurred at least once to two in 100 females (2.1 per cent) and three in 100 males (3.1 per cent).

In relation to the occurrence of more serious sexual assaults, the findings of the National Population Survey show that about four in 100 (3.8 per cent) females had at least once been raped, i.e., had an unwanted vaginal penetration by a penis. The survey's findings indicate that about two in 100 persons (2.1 per cent) of both sexes have either experienced at least once an unwanted anal penetration with a penis, attempts to commit these acts or anal penetration by means of objects or fingers.

A summary of the most commonly occurring unwanted sexual acts documented in the four national surveys undertaken by the Committee is given in Table 7.2. Elsewhere in the Report, more detailed findings are given with respect to victims who experienced these acts and their care and management by the police, hospitals and child protection services.

With the exception of young female patients treated at hospitals, a high proportion of young females in each of the other surveys was known to have been sexually molested (i.e., acts involving touching, fondling). A higher pro-

Table 7.2

Types of Sexual Acts Committed

Type of Sexual Contact	National Surveys							
	Population		Police Force		Hospital		Child Protection	
	Males	Females	Males	Females	Males	Females	Males	Females
	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent
Fondling/touching breasts, buttocks	3.7	32.9	11.0	43.5	4.1	8.9	10.8	33.9
Fondling/touching genital area	12.1	14.5	60.1	48.1	31.1	35.9	30.0	34.7
Kissing mouth, other parts of body	0.3	3.0	9.9	14.8	5.4	4.0	7.5	13.5
Oral-Genital	2.6	1.6	29.7	6.7	20.2	11.8	10.0	6.9
Oral-Anal	0.5	0.5	1.5	0.8	6.8	2.2	0.8	0.4
Attempted vaginal penetration with penis	0.0	5.9	0.0	6.5	0.0	17.9	0.0	9.9
Vaginal penetration with penis	0.0	3.8	0.0	17.6	0.0	31.0	0.0	19.6
Vaginal penetration with finger	0.0	5.2	0.0	7.0	0.0	13.3	0.0	9.6
Vaginal penetration with object	0.0		0.0	0.6	0.0	2.2	0.0	0.9
Attempted anal penetration with penis	1.0	1.3	4.4	1.3	10.8	2.6	4.2	0.8
Anal penetration with penis	0.6	0.3	8.2	0.6	28.4	3.6	16.7	1.8
Anal penetration with finger	0.5	0.3	2.0	0.5	6.8	0.9	2.5	0.1
Anal penetration with object			1.3	0.2	1.4	0.4	0.8	0.1
Bestiality	0.0	0.0	0.0	0.1	0.0	0.0	0.0	0.0

Non-accumulative listing of unwanted sexual contacts, for children under age 16.

portion of medically examined girls, about one in seven, was reported to have been a victim of oral-genital and oral-anal acts than that of girls known to the police or child protection services (about one in 13 respectively). A similar trend occurred with respect to acts of vaginal penetration or attempted vaginal penetration. About a third of the girls under age 16 who were medically examined at hospitals had been raped or some other type of vaginal penetration had been attempted. In contrast, one in six girls investigated by the police and one in five known to child protection workers were reported to have been raped.

Somewhat similar trends to those involving the experience of girls were found with respect to the reporting of unwanted sexual acts against boys under age 16. A higher proportion of sexually assaulted boys known to the police (about one in three) and to a lesser extent to hospitals (about one in four) had been victims of oral-genital and oral-anal acts than that of boys known to child protection services (about one in nine).

Where there is mutual consent between partners, many of the sexual acts documented in the national surveys fall within the normal range of sexual behaviour engaged in during childhood or adolescence. The general research on human sexual behaviour suggests that there is typically a progression with age and experience from acts involving a sexual touching and fondling to intercourse and oral-genital contacts. While in some instances, the substance of an act involving particular types of partners constitutes a criminal offence (e.g., incest), in other cases, it is more the attendant social circumstances that sets them apart as offences and establishes a gradient from minor to serious crimes. With respect to sexual assaults committed against children and youths, the findings given here and in Chapter 6, *Occurrence in the Population*, indicate that:

1. **A sizeable number of Canadian females, and to a lesser extent, males, are victims of unwanted sexual acts.**

2. **These unwanted sexual acts encompass a wide range of sexual behaviours, one broader than may be commonly realized.**

3. **Most of the unwanted sexual acts committed against children and youths documented in the national surveys were not reported to family members and friends, and in only a small proportion of these cases were the public services notified.**

4. **The types of unwanted sexual acts committed become known or are reported on a selective basis to different public services.**

These findings constitute a forceful reminder that the proportions and types of unwanted sexual acts reported by particular public services or community agencies are likely to vary considerably from each other, and that each such source of information only partially reflects the actual occurrence of these acts which are committed against children, youths and adults in the population.

Threats and Use of Force

Since a clearcut distinction was not always made in the records drawn upon in the three national surveys of public services about how the sexual assaults had been committed, the findings given here pertain to elements which were more clearly and consistently identified by attending professional workers. These elements were where victims had been threatened or where assailants had used some type of physical force before or during an assault.

Assaults where threats had been used included those where the child had been told that he or she would suffer reprisals, blackmail or physical assault. Initially, four sub-categories were developed to distinguish contacts where physical force had been used. The "physical coercion" of a victim involved the use of force by a suspect, for instance, incidents where a child had been physically held down. The category of a "direct assault" of a victim by a suspect included any other type of sexual touching ranging from grabbing a girl's breast to the forced insertion of a penis in a child's mouth. The use of weapons was divided into instances where suspects "threatened" to use a knife, a gun or another object, and those where they were known to have actually "brandished" a weapon either before or during an assault. In the analysis of sexual assaults, these several acts were aggregated into a single category of a victim having been "physically forced" by an assailant. In the remainder of the sexual assaults where neither threats nor physical force were reported, the incidents may have involved: the consent of the child; the use of gifts; and persuasion or seduction by assailants.

The results of the three national surveys of public services indicate that, on average, three in five sexually assaulted children under age 16 had either been threatened or physically coerced by assailants.

Action Taken by Assailant	Victim Threatened and Physically Coerced					
	National Police Force Survey		National Hospital Survey		National Child Protection Survey	
	Males	Females	Males	Females	Males	Females
	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent
Victim threatened	6.0	2.8	16.2	21.1	20.0	21.6
Victim physically coerced	55.8	58.2	27.0	33.0	26.7	28.9
Victim neither threatened nor coerced	38.2	39.0	56.8	45.9	53.3	49.5

In the National Police Force Survey, approximately three in five sexually assaulted children known to the police had been intimidated or physically forced by their assailants to engage in sexual acts. In contrast, for about half of

the victims examined at hospitals or known to child protection workers, neither of these actions was reported to have occurred. The findings suggest that when threats or physical force are used in sexual assaults against children, proportionately more of these victims and their families may seek police assistance than those contacting other public services. The threat to use a weapon, or the actual brandishing of a weapon before or during an assault, occurred in about two per cent of all assaults and knives were used in over three-quarters of these incidents. The other weapons used to threaten children included: guns; baseball bats or metal rods; leather belts for bondage or whipping children; wire clothes hangers; and scissors or a screwdriver to stab victims.

Overall, the results of the three national surveys indicate that a sizeable number of sexually assaulted children had been threatened or physically assaulted before or during these incidents. Only about one in 16 (6.4 per cent) victims was reported to have voluntarily agreed or consented to the sexual acts. In the remainder of the incidents, the children had been persuaded, bribed or seduced. The findings clearly show that few of the assaults can be deemed casual or harmless contacts and that most were accomplished against the will of the child.

Physical Injuries and Emotional Harms

Sharply contrasting estimates have been reported about the extent and types of injuries experienced by victims of sexual assaults. These estimates vary from less than one per cent to over half of the victims having been severely harmed by assailants.

The 1953 Kinsey report on *Sexual Behavior in the Human Female* rejected as a "myth fostering hysteria" the conclusion that an appreciable number of female children was injured by the sexual advances of adult males. In the study of 4441 females, 1075 of whom when they were children had had sexual contacts with adults, the 1953 Kinsey report found that while over 80 per cent had been emotionally upset or frightened, only a few said that they had been physically injured.

> The exceedingly small number of cases in which physical harm is ever done to the child is to be measured by the fact that among the 4441 females on whom we have data, we have only one clearcut case of serious injury done to the child and a very few instances of vaginal bleeding which, however, did not appear to do any appreciable damage.[6]

The 1957 British study of victims of sexual offences found that the majority had experienced no physical injuries. This conclusion was based on the finding that most of these incidents had involved minor offences and that, in some instances, children had consented to the sexual acts. Of the 179 physically injured victims in the British study, 58 became pregnant, 32 had suffered severe injuries or had contracted venereal disease and 68 had been cut or bruised. The British study concluded:

> The effects of sexual offences must be assessed more by the results they may have on the moral and emotional development of the victims than on the

basis of the physical injury sustained. There is very little information and considerable difference of opinion concerning the moral and emotional effects of sexual misbehaviour on young children.[7]

The estimates in Canadian research of the extent of the physical injuries resulting from sexual assaults range from: 30 per cent of sexually assaulted children (1975-76 survey by Le Comité de la protection de la jeunesse);[8] 48.4 per cent of the victims 16 years and older (1979 Vancouver victimization survey);[9] 52 per cent of rape victims (1978-79 Winnipeg Sexual Assault Survey);[10] and 58.5 per cent of 147 sexually assaulted persons (1979-80 Ontario Rape Crisis Centre Survey).[11] These divergent findings may be partially accounted for by the fact that: different definitions of what constitutes an injury have been used and, on occasion, there has been no specification of the types of injuries sustained; the experience of victims known only to special services and community agencies has been reported; there has seldom been medical confirmation of injuries to victims; and most of the research reports have focussed on the experience of adult female victims, not that of children and persons of both sexes.

In the national surveys, where it was feasible in light of the information available, findings were obtained about physical injuries and emotional harms sustained by sexually assaulted children and youths. In the National Population Survey, persons who had been sexually assaulted at least once were asked if they had been physically injured or emotionally harmed by the first such incident which had happened to them. Specific types of physical injuries were itemized and victims were also asked if they had been emotionally or psychologically harmed to specify the nature of these harms. The results on injuries resulting from sexual assaults obtained in the National Population Survey are significant because they constitute reports given directly by victims. While on the basis of these self-reports it cannot be assumed that persons who did not indicate that they had not been injured had not in fact been harmed, it is likely, particularly in light of the fact that intensely personal information was volunteered about sexual assaults, that the harms sustained may have been minor, or of a short duration, or may not have been identified (e.g., sexually transmitted disease).

In the National Police Force Survey, the general occurrence files listed: children reported to have been physically injured; children specifically reported not to have been physically injured; and cases where no information was given about injuries. Where physical injuries were not reported in police records, it is a reasonable assumption that none of an externally visible nature was known by the police to have been sustained or that none had been reported by victims. This omission, however, does not mean that children for whom no injuries were reported had not been physically hurt since certain symptoms may only become known later or be identified as a result of a medical examination. For these reasons, information on injuries given in police records likely constitutes an underestimate of the extent of physical injuries resulting from sexual assaults. Police records do not usually list information with respect to emotional and psychological harms incurred by victims.

On the basis of the medical examination of victims, detailed findings on physical injuries and emotional harms were obtained in the National Hospital Survey. These findings are given in Chapter 31, *Injuries Sustained.* In the development of the research protocol for the National Child Protection Survey, it was found that this type of information was not routinely documented in case records since some children had been previously medically examined, were referred for a clinical assessment, or the assaults had occurred sometime in the past. In this survey, detailed information was obtained about the social, behavioural and psychological problems of sexually assaulted children (Chapter 28, *Provision of Child Protection Services).*

Although the nature of the information obtained on injuries in the three national surveys differs with respect to its completeness and classification, several consistent trends emerge from the findings.

1. Both male and female victims of sexual assaults were physically injured and emotionally harmed.
2. Proportionately, more female than male victims of sexual assaults were physically injured.
3. Where information is available, proportionately more emotional harms than physical injuries were sustained by victims.

Harms Sustained	Physically Injured and Emotionally Harmed Victims					
	National Population Survey		National Police Force Survey		National Hospital Survey	
	Males	Females	Males	Females	Males	Females
	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent
Physically injured	3.9	19.9	6.1	13.8	10.8	24.8
Emotionally/ psychologically harmed	6.8	24.0	—	—	54.0	48.8
Long-term emotional/ psychological harms	—	—	—	—	18.9	17.6

In the National Population Survey, the results pertain to the first sexual assaults experienced by victims with most of these incidents occurring when the persons contacted in the survey had been children and youths. Of female victims, one in five (19.9 per cent) had been physically injured and one in four (24.0 per cent) had been emotionally harmed. Substantially fewer male than female victims reported injuries with only one in 25 (3.9 per cent) having suffered a physical injury, most commonly an irritated or infected penis or anus. One in 15 (6.8 per cent) males had been emotionally harmed.

In the national survey of police records, no information on physical injuries was reported for over half (54.8 per cent) of the children. For a third (33.2 per cent) of the cases, no physical injuries were reported. Of all physically injured children (12.1 per cent) for whom information was obtained in the National Police Force Survey, over twice the proportion of girls (13.8 per cent) than that of boys (6.1 per cent) had been physically injured. Most of the physically injured children had sustained more than one type of physical harm. Twice as many girls (31.5 per cent) as boys (16.7 per cent) had been bruised or scratched on the non-sexual parts of their bodies. Two-thirds (67.1 per cent) of the injured girls had received vaginal injuries, such as bruising, tearing, redness, irritation, a vaginal discharge or a broken hymen. In contrast to injured boys, of whom two-fifths (42.9 per cent) had had anal injuries, only 6.3 per cent of girls had experienced this type of injury. About a third of injured boys (33.3 per cent) and girls (28.9 per cent) reported other physical harms including 13 girls under age 16 who had become pregnant.

In the National Hospital Survey, about one in four girls (24.8 per cent) and one in nine boys (10.8 per cent) were found to have been physically injured. In each instance, these proportions were higher than those documented in the National Population Survey. On the basis of the mental health assessment of these children, half (49.4 per cent) were found to have suffered one or more emotional and behavioural harms resulting from sexual abuse. Further, in the judgment of attending health workers, about one in six children (17.8 per cent) was diagnosed as potentially sustaining a long-term emotional or behavioural harm attributable to sexual abuse.

The results of the three national surveys drawing upon the experience of well over 7000 sexually assaulted children and youths show that a larger proportion of victims suffered emotional harms than that sustaining physical injuries. As noted elsewhere, however, relatively few of the victims immediately sought treatment or counsel.

Sex of Assailants

In recent years, there has been a growing public awareness and recognition in Canada of the rights and needs of gay or homosexual persons. Various estimates, none known to the Committee to have been substantiated by comprehensive documentation, have been made of the proportion of gay persons in the Canadian population. In the National Population Survey, each person was asked "How old were you when you first had a sexual relationship?" Immediately preceding this question, a definition was provided that "by a sexual relationship, we mean having intercourse or sex — in or out of marriage — with someone of the other sex or of the same sex". The definition identified intercourse, either vaginal or anal, as the main element constituting a 'sexual relationship'; the additional specification of having had 'sex' was intended to include sexual behaviour occurring only between females. In the pretest survey, it was found that this question appeared to be clearly understood.

In the National Population Survey, of persons age 18 and older, 78.0 per cent of females and 86.2 per cent of males reported having had "intercourse or sex" at least once. With respect to the first time that a sexual experience of this kind had occurred, the persons contacted were also asked how old they had been at the time and the age and sex of their partner.

Of males and females having had "intercourse or sex", 95.8 per cent said that their first such relationship had been with members of the opposite sex. About one in 24 persons (4.2 percent) said that their first act of "intercourse or sex" had been a homosexual relationship with the proportions for males (4.1 per cent) and females (4.3 per cent) being about the same in this regard.

The results of the National Population Survey do not provide a measure which permits an estimate to be made about the proportion of gay persons in relation to all persons contacted in the representative sample of Canadians. The findings do, however, indicate that the first time one in 24 sexually experienced persons had had "intercourse or sex", the relationship had been a homosexual one and that when this relationship had first occurred, most of these persons had been children or youths.

In Chapter 12, *The Sexual Offences*, a legal review is given of the sexual offences for which the insertion of a penis in an anus is an element of an offence. An exception is specified with respect to acts of this kind, if both male partners are 21 years-old or older, if both consent to the act, and if these acts are performed in private.

Of the 4.1 per cent of males whose first sexual relationship had involved the insertion of a penis in an anus, the age of their partner was not reported in about one in six cases. Of the remainder for whom this information was available, only one in seven (13.8 per cent) had involved persons, both of whom at the time had been age 21 years-old or older. In six in seven (86.2 per cent) of the reported acts of this kind, either one or both males were under 21 years-old.

In the Kinsey report on *Sexual Behaviour in the Human Male*, it was found that the average age when the first homosexual contact had occurred was at about age nine.[12] In the National Population Survey, the age range was between 10 and 20 years-old. Over seven in 10 of the males (72.0 per cent) had been under age 18 when they had first been involved in these sexual acts.

Of the six in seven males who had been under age 21 when they had first experienced anal penetration with a penis, the ages of their male partners were:

Males	Per Cent
Partner age 21 years or older	28.0
Partner same age	32.0
Partner younger	8.0
Partner less than three years older	16.0
Partner more than three years older but under age 21	16.0

Based on a representative national sample of the Canadian population, the findings suggest that a majority of first sexual acts between males involving the insertion of a penis in an anus are situations where:

1. One partner is typically under age 21 (86.2 per cent) and of this group, seven in 10 (72.0 per cent) had been under age 18.
2. Over two in five (44.0 per cent) of the under 21 year-old males' partners were more than three years older or were adults when the acts occurred.

In addition to the Committee's findings on heterosexual and homosexual behaviour obtained in the National Population Survey, its findings from the other national surveys confirm the generally held belief that most sexual assaults against children and youths are predominantly committed by males. When findings about the sex of the assailants are aggregated from the national surveys, 98.8 per cent of the suspected offenders were males and 1.2 per cent were females. In the surveys, the gender ratio between male and female assailants varied sharply with the proportion of female assailants being respectively: 1.8 per cent, National Police Force Survey; 2.8 per cent, National Population Survey; and 10.0 per cent, National Child Protection Survey. These differences are likely accounted for by different types of sexual assaults becoming known to the police, hospitals and child protection services.

When the sex of the victims and the assailants are considered in relation to whether the assaults entailed heterosexual or homosexual acts, the aggregated results of the three national surveys of public services indicate that four in five offences (80.9 per cent) were heterosexual and one in five (19.1 per cent) was homosexual. Predictably, virtually all sexual offences (99.2 per cent) against female victims were committed by males, and although the proportion of female assailants was higher when boys (3.1 per cent) than when girls (0.8 per cent) were victims, most of the boys and male youths were sexually assaulted by males.

Type of Association

In developing its classification of the types of affinity and position of trust relationships, the Committee drew up its listing on the basis of the categories established by the sexual offences in the *Criminal Code*. This listing also included other types of association occurring between victims and assailants. In this summary, the eight categories of association do not indicate that certain proscribed sexual acts specified by *Criminal Code* sexual offences had actually been committed. In the instance of the "incest relationship", for example, while this criminal offence specifies blood relatives who are prohibited from having intercourse with each other, this category is used here to include persons having an incest-type blood relationship to the child who in fact may have committed a number of different sexual acts, none of which was intercourse. The analysis of the type of association and the sexual acts committed is given in Chapter 25, *Elements of the Offences*.

The categories of association between victims and suspected offenders used were:

1. *Incest Relationship.* Blood relatives to the child who were: father, mother, brother, half-brother, sister, half-sister, grandfather and grandmother. (The offence of incest also specifies the blood relationships of child and grandchild, categories which were inapplicable in this analysis.)
2. *Other Blood Relative.* Blood relatives to the child who were: uncle, aunt, nephew, niece and cousin.
3. *Guardianship Position.* As specified in Section 153 of the *Criminal Code*, males whose relationship to a female under age 21 was that of: step-father, foster-father and legal guardian. Included in this category is employer or work supervisor to a female employee under 21.
4. *Other Family Members.* Family members not having a blood relationship to the child who were: adoptive father, adoptive mother, step-mother, foster mother, adoptive brother, foster-brother, adoptive sister, foster-sister, adoptive grandfather, adoptive grandmother, common law (father, mother, brother, sister), in-laws, step-uncle, step-aunt, among others.
5. *Persons in Positions of Trust.* Persons in positions of authority or trust with respect to the child, including: teachers, daycare workers, doctors, babysitters, social workers, school bus drivers, school crossing guards, Big Brother/Big Sister youth workers, minister/priest/rabbi, camp counsellor, dentist, etc.
6. *Friends/Acquaintances.* Persons known to the child who were: boyfriends, girlfriends, personal friends, family friends, acquaintances, neighbours.
7. *Other Persons.* A miscellaneous listing of other persons not included in other categories, all of whom were known or could be identified by victims.
8. *Strangers.* Persons whose identities were unknown to victims, or were not recollected by them.

With one exception, in each of four national surveys, a full listing was obtained of the specific types of association between victims and suspected assailants. The exception involved the National Population Survey where only a few persons in positions of trust were identified with the remainder being aggregated into the "other" category.

The findings of the four surveys show that, in general, the types of association reported in the National Population Survey and the National Police Force Survey are approximately similar, but that both differ substantially from those reported in the National Hospital Survey and the National Child Protection Survey. In the first two surveys, between a fifth and a quarter of the suspected assailants were family members, about a third to a half were friends or acquaintances, and most of the remainder were strangers. In contrast, about half of the assailants of children examined at hospitals and slightly less than nine in 10 suspected offenders of victims known to child protection workers were family members. About one in five patients examined at hospitals had been sexually assaulted by friends or acquaintances and the proportion of vic-

tims falling in this category known to child protection services was about one in 14. In the latter public service, only one per cent of the assailants were reported to have been strangers to children.

Table 7.3

Type of Association Between Sexually Assaulted Victims and Suspected Assailants

Type of Association Between Victim and Suspected Assailant	National Surveys			
	National Population Survey	National Police Force Survey	National Hospital Survey	National Child Protection Survey
	Per Cent	Per Cent	Per Cent	Per Cent
Incest relationship	9.9	9.1	23.7	45.8
Other blood relative	8.4	4.2	7.8	4.5
Guardianship position	3.0	4.4	5.6	16.9
Other family member	2.5	3.1	9.8	19.2
Position of trust	1.0	5.3	5.8	2.8
Friend/acquaintance	48.0	36.3	21.5	7.0
Other person (known)	9.4	1.7	8.0	2.8
Stranger	17.8	35.9	17.8	1.0
TOTAL	100.0	100.0	100.0	100.0

The results of the national surveys confirm trends already noted that the types of sexually assaulted children and youths known to the public services differ significantly. When only the types of association between victims and suspected assailants are considered, the incidents known to the police more closely approximate the experience of persons in the National Population Survey who reported first unwanted sexual acts. An expected difference, however, is that proportionately more cases involving strangers were reported to the police than those who were in this category in the other surveys. In comparison to the population and police surveys, a substantially larger proportion of children and youths who had been sexually assaulted by family members was cared for at hospitals or by child protection workers. In this regard, these services were dealing with a less representative group of sexually assaulted young victims.

Considering the ages of the children, it is not surprising that there were few instances of assaults committed by employers or co-workers. For certain types of crime such as theft or robbery, an obstacle that may hinder effective police work is the lack of information about the identity of the perpetrator. In the 1957 British study on *Sexual Offences*, it was noted that:

> . . . where an association existed between the victims and offenders prior to the offences, the chances of the offenders being detected were much

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> . . . where an association existed between the victims and offenders prior to the offences, the chances of the offenders being detected were much

greater. It is therefore not surprising to find that more than 4 in 10 of the 990 victims, involved in cases in which the offenders were convicted, knew them prior to the offences.[13]

Of the sexual assaults committed against children documented in the national surveys, the identities of a majority of the assailants were known. The proportions of children sexually assaulted by strangers were: 17.8 per cent (National Population Survey); 35.9 per cent (National Police Force Survey); 17.8 per cent (National Hospital Survey); and 1.0 per cent (National Child Protection Survey). **The results clearly show that the main need of sexually assaulted children is for adequate protection from persons whom they already know and may trust.**

Assaults by Groups

The majority of the sexual assaults against children are committed by one assailant whether these assaults are single episodes or are committed periodically or continuously over a period of time. Less is known about instances where victims may have been attacked on several occasions by different assailants or where victims are simultaneously assaulted by several persons. Based largely on the experience of adults, the research suggests that group assaults are usually planned ahead of time, that more violence and coercion are involved and that the victims of these incidents are often physically injured.

The 1957 British report on *Sexual Offences* found that most of the sexual offences committed by groups were indecent assaults against girls. The estimates for Canada about the proportion of women attacked by two or more assailants range from 14.1 per cent to over half of all sexual assaults which are committed. Beyond a number of case studies, there is no documentation concerning the experience of children and youths who have been victims of group assaults.

A total of 343 incidents involving children having been sexually assaulted by two or more persons was documented in the three national surveys of cases reported to public services. Girls were victims in nine in 10 (89.5 per cent) group attacks; of all types of sexual assaults committed against girls, one in 11 (9.0 per cent) involved two or more assailants. While there were only 36 instances reported in the three surveys of boys having been sexually assaulted by two or more assailants, the findings confirm that acts of this kind do in fact occur. Boys were victims of one in 10 (10.5 per cent) sexual assaults by groups; of all sexual assaults committed against boys, about one in 22 (4.5 per cent) had involved two or more assailants.

The proportion of cases involving more than one assailant was generally similar in each of the three national surveys. Of the 326 group sexual assaults for which the number of assailants was specified, the distribution was: two assailants (58.0 per cent); three assailants (20.6 per cent); four assailants (14.7 per cent); five assailants (3.7 per cent); six assailants (1.5 per cent); and eight assailants (1.5 per cent).

Because the records of the police were more complete and detailed than those drawn upon in the other surveys, the findings of the National Police Force Survey serve as the basis for reviewing the ages of victims and assailants involved in incidents of this kind. The 189 victims of group sexual assaults documented in police general occurrence records had been assaulted by 413 assailants. Regardless of the ages of victims, there was no marked variation with respect to the average age of their assailants which was 18.9 years-old.

Age of Victims of Group Sexual Assaults	Average Age of Assailants
Under age 7	18.6 years
7-11 years	18.1 years
12-13 years	18.4 years
14-15 years	19.8 years

On average, a majority of the assailants committing group assaults were adolescent males with there being only a slight and predictable increase in the ages of assailants who had attacked victims between ages 14 and 15. On the basis of the findings of the National Police Force Survey, three types of group sexual assaults can be distinguished. These categories are: assaults committed by male adolescents; assaults committed by adults; and assaults committed by both adolescents and adults.

Slightly over three in five (62.4 per cent) group sexual assaults were committed by groups of male adolescents. About one in five (18.0 per cent) group sexual assaults had involved only adult assailants, and about one in 12 (8.5 per cent) had been committed by a combination of at least one adolescent and one adult. Of the remainder, the age of one or more of the assailants was unknown.

Proportionately, the youngest group of victims, children under age seven, was at the greatest risk of being attacked by two or more adults. One third (33.3 per cent) of group sexual attacks against children under seven were committed by adults, some of whom were seven or eight times older than their victims. Group sexual assaults committed by adults constituted one in five (19.1 per cent) of the attacks against victims between ages seven and 11, about one in nine against victims between ages 12 and 13 (10.7 per cent) and about one in five (19.7 per cent) against victims between ages 14 and 15.

In the infrequently occurring group sexual assaults committed jointly by adolescents and adults, the age pairings of some of the assailants were: 14 and 26; 13 and 44; 17 and 30; and 15 and 31. Little is known about the circumstances involved in these unusual types of group sexual assaults, about the mental capabilities of the persons involved, or about who may have incited whom to assault the child. Although incidents of this kind occur, the findings show that the greatest risk to young female victims in these types of attacks is from gangs of predatory and dangerous adolescent males.

Table 7.4

Group Sexual Assaults by Ages of Suspected Offenders

Ages of Victims of Group Sexual Assaults	Ages of Suspected Assailants				
	Adolescents (Under Age 21) (n = 118)	Adults (Age 21 and Older) (n = 34)	Adolescents And Adults (n = 16)	Age Unknown for One or More Assailants (n = 21)	Total (n = 189)
	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent
Under age 7	53.3	33.3	—	13.3	99.9*
7-11 years	69.1	19.1	7.1	4.7	100.0
12-13 years	64.3	10.7	8.9	16.1	100.0
14-15 years	59.2	19.7	10.5	10.5	99.9*
TOTAL	62.4	18.0	8.5	11.1	100.0

National Police Force Survey.

* rounding error

Alcohol and Drugs

Dating back at least to the assembling of crime statistics before the turn of the century when such information was documented in Canada, it has been a widely held belief that the use of alcohol, and more recently of drugs, is closely associated with the occurrence of certain types of crimes, particularly offences committed against the person. In order to document the validity of this belief, information on the use of these substances by victims and assailants was collected in each of the three national surveys of cases reported.

In light of the absence of specific and accurate information in these surveys, it was not feasible to document how much alcohol or how many drugs had been used, but only to learn whether it was reported that these substances were known to have been used by victims, by suspected assailants, or by both persons. In this regard, the information obtained does not constitute a measure of the actual extent to which victims or suspected assailants may have been using alcohol or drugs.

National Survey	Victims Using Alcohol/Drugs	
	Males	Females
	Per Cent	Per Cent
Police Force	4.3	4.8
Hospital	—	1.6
Child Protection	5.0	5.9
Average	4.0	4.6

In the three national surveys, on average, one in 25 boys and one in 21 girls were reported to have been using either alcohol or drugs when the assaults occurred. With the exception of sexually assaulted patients examined at hospitals, the findings were of the same order for assaults against children reported to the police and child protection services.

When these findings are compared to those of a 1982 national survey of children between 12 and 19 years-old, it appears that sexually assaulted children are no more likely to use alcohol and drugs than other Canadian children, and indeed, they may have used them somewhat less often.[14] The national survey undertaken by the Department of National Health and Welfare found that by age 10, a quarter of the youths who were between 12 and 19 years-old in 1982 had drunk alcohol. Six per cent of the children between ages 12 and 14 said that they had smoked marijuana; a quarter of the children in this age group had drunk alcohol at least once during the month prior to the survey.

For purposes of comparison, when only the results of the National Police Force Survey about the use of alcohol by victims of sexual assaults are considered, the findings are similar to those of the 1957 British report on *Sexual Offences*.[15] In the British study which obtained information only on the use of

alcohol, it was found that 4.5 per cent of the victims who were 15 years or younger had been drinking, a proportion which is slightly larger than the 4.1 per cent of the Canadian children for whom this information was reported in the National Police Force Survey.

In contrast to the relatively small number of victims reported to have been using alcohol or drugs when the sexual assaults were committed, on average, over twice as many boys and over three times as many girls were reported to have been assaulted by suspects under the influence of these substances. About one in six (15.7 per cent) of the girls and about one in 10 (9.7 per cent) of the boys were reported to have been sexually assaulted by a person who had been using either alcohol or drugs.

The proportion of suspected assailants reported to have been using these substances when they had assaulted children was comparable for incidents coming to the attention of the police and hospitals. In contrast, child protection workers reported a substantially higher proportion of suspected assailants to have been under the influence of alcohol or drugs. Almost a third of the girls (31.4 per cent) and a quarter of the boys (23.3 per cent) were documented as having been sexually attacked by a person using one or other of these substances. These findings suggest that either the types of sexual assaults coming to the attention of child protection services differ significantly in this respect from those known to the police or hospitals, or that child protection workers may more consistently seek to learn if these substances may have been used in their assessments of sexual assaults against children.

National Survey	Suspected Assailants Using Alcohol/Drugs	
	Male Victims	Female Victims
	Per Cent	Per Cent
Police Force	7.4	11.6
Hospital	6.8	10.6
Child Protection	23.3	31.4
Average	9.7	15.7

With the exception of the findings of the National Child Protection Survey, **the use of alcohol and drugs by assailants does not appear to have been a contributing factor in most of the reported sexual assaults committed against children and youths.**

Professionally Confirmed Assaults

The child or youth who tells another person about a sexual assault may be in a position of double jeopardy of being disbelieved on account of his or her age and on account of the stigma associated with sexual offences. The legal assumptions about the testimonial trustworthiness of sexually assaulted chil-

dren and youths are reviewed in Chapter 14, *Evidence of Children*. In this chapter, the findings of the three national surveys of public services are drawn upon in relation to whether professional workers assisting young victims believed or disbelieved their accounts of sexual assaults committed against them.

It has become commonplace in some of the research on sexual offences to describe the police investigation of these incidents as a harrowing experience. For these reasons, it has been concluded that "fewer women than formerly are willing to go to the police to lay charges against an assailant" and on occasion when this step is taken, "the police appear to believe that large numbers of women lie about sexual assault and must be prevented from pursuing their complaints."[16]

These reactions by the police are said to account for the fact that a large number of the complaints about sexual offences are classified as "unfounded" in police investigations. In a 1970 study of rapes reported to the Toronto police,[17] while 63.8 per cent were listed as "unfounded" in police records, the researchers concluded that about nine in 10 (89.7 per cent) had actually occurred. In the report on the experience of five Ontario Rape Crisis Centres, "an alarming increase" was noted "in charges of Public Mischief" being brought against the victim who reports a sexual assault and is not believed.[18]

Although each of the three main services most frequently turned to by sexually assaulted children uses a different vocabulary to describe the attending professional worker's assessment of whether an incident has occurred, the conclusions reached are comparable in relation to indicating whether the victim was believed or disbelieved. In the field of child welfare, a case is said to be "confirmed" if in the judgment of the attending child protection worker a child's account of an assault is believed and/or if there is firm evidence indicating the assault had been committed. Cases which are "not confirmed" are those where there may be insufficient supporting evidence or where a worker is uncertain whether the assault had actually been committed.

In medicine, several measures may be drawn upon as an indication of a physician's assessment of a patient's condition. These measures include: the patient's presenting complaint(s); the results of a physical examination and laboratory tests; a description given in a patient's chart of why he or she needed medical care; and a diagnosis listing a patient's cause of death, injuries or diseases.

As a means of safeguarding a victim's identity and on occasion to preclude such information later being used for legal purposes, the Committee learned in the course of undertaking the National Hospital Survey that some physicians were reluctant to use diagnoses specifying sexual assault or child sexual abuse. As noted in Chapter 32, *Medical Classification of Sexual Assault*, although most physicians had used diagnoses identifying sexual assault or abuse, a majority of these diagnoses are not recognized in the most widely used system of disease classification.

In police and crime statistics, an incident or "an occurrence" is considered to be "founded", if, as a result of an investigation, the evidence indicates that the offence had occurred. "Founded occurrences" include cases where charges are laid against a suspect as well as those instances where a suspect is not known or located, but where in the judgment of the police the evidence indicates that an offence had happened. In contrast, an "unfounded occurrence" is one where it appears in the judgment of the police that no offence occurred. By definition, there is invariably a shortfall between the number of "founded" occurrences reported and the number of charges subsequently laid. This difference is accounted for by the proportion of the cases where the suspects are not located but where it is concluded that the offences had occurred, and for other reasons, such as the parents of a child being reluctant to press charges or where the victims or the witnesses are unwilling to testify.

The findings of the three national surveys of public services show that while the police and physicians believed that virtually all of the sexual assaults against children reported to them had occurred, substantially fewer of the cases cared for by child protection workers were reported to have been "confirmed".

National Surveys	Proportion of Cases Reported as Confirmed/Founded		
	Male Victims	Female Victims	Total
	Per Cent	Per Cent	Per Cent
Police Force	95.5	93.6	94.0
Hospital			
(i) Presenting complaint	91.9	93.0	92.8
(ii) Frequency of assaults/child sexual abuse	91.9	92.3	92.3
Child Protection	68.9	43.1	45.5

Only 6.0 per cent of the sexual assaults against children under age 16 were classified as "unfounded" by the police, or were incidents where it was deemed that there was insufficient evidence to indicate the assaults had occurred. On the basis of the presenting complaints and the description given of the frequency of occurrence of sexual assault and child sexual abuse, it appears that physicians believed the vast majority of the accounts given by patients. The findings of these two surveys differ strikingly from those of the National Child Protection Survey where it was found that over half of the cases (54.5 per cent) of suspected child sexual abuse were "not confirmed" by attending workers.

In light of the statements sometimes made by observers that certain professional workers, most notably the police, may often disbelieve accounts given by sexually assaulted victims, **the Committee's findings clearly show that when children and youths are victims, their veracity is highly trusted by the police and physicians.** An unexpected finding is that concerning children

known to child protection workers, of whom over half were not initially believed, namely, their accounts were "not confirmed."

The findings of the three national surveys indicate that, in general, accounts given by boys are about equally or more often believed than those given by girls. With the exception of the results of the National Hospital Survey where there were no marked differences by the sex of the patients in this regard, the disparities in the other surveys were respectively 1.7 per cent of cases investigated by the police and 25.8 per cent of cases known to child protection workers. With the exception of the National Hospital Survey where the gender of the attending physician was noted, this type of information was not obtained in the other national surveys. On the basis of the Committee's contacts with public services across Canada, it appears that many police officers investigating sexual assault cases are males and that many child protection workers caring for sexually abused children are females. To the extent that these gender ratios are valid, then it may be the case that the gender of professional staff relative to that of victims may be a less significant factor contributing to the potential harassment of victims than the attitudes of professionals and the special training that they may have had. In this respect, it is notable that the highest proportion of "not confirmed" cases (56.9 per cent) involved girls known to child protection workers.

The findings of the National Police Force Survey contrast sharply with the reports about the experience of women who have been raped or sexually assaulted. Since no comprehensive national study for Canadian adults has been made along these lines, it is unknown whether these distinctions occur because adults may react differently than children to these offences, whether different types of acts are committed or whether different investigation practices for adults and children are used by the police. It may also be the case that the sources upon which the conclusions reached for adults about the large number of "unfounded" sexual offences are numerically too small and too unrepresentative of the full range of the sexual offences investigated by the police.

Charges Laid

The accuracy of the information obtained about whether police charges were laid against suspected assailants varied with the completeness of the records drawn upon in the national surveys of public services. For example, when physicians examine a sexually assaulted victim, they may not know whether charges are pending or have been laid, and as a result, this information may not be recorded in the patients' charts. Accordingly, the findings obtained in the three national surveys are based only on reports where it was indicated that charges had been laid.

Of sexual assaults known to the police and hospitals, proportionately more suspected assailants whose victims were boys than those whose victims were girls were reported to have been charged by the police. This trend was reversed

National Surveys	Charges Laid by Police Against Suspected Assailants		
	Male Victims	Female Victims	All Victims
	Per Cent	Per Cent	Per Cent
Police Force	46.1	40.9	41.6
Hospital	36.5	22.8	24.4
Child Protection	16.7	22.2	21.4

for cases known to child protection workers where one in five assailants (22.2 per cent) whose victims were girls and one in six whose victims were boys were reported to have been charged.

To the extent that the findings from the National Hospital and Child Protection surveys are valid concerning whether charges were laid, then it appears that this was about half as likely to have occurred involving cases known to these services than those where the police initially undertook the investigations. This difference, if valid, is even more striking when it is recalled that the identities of assailants were unknown in 35.9 per cent of cases investigated by the police, in 17.8 per cent of medically examined patients, and in one per cent of the children known to child protection workers.

While in comparison to the cases reported to the police and hospitals the identities of more suspected assailants were known by child protection workers and proportionately fewer of these suspects were reported to have been charged, the more usual means of intervention adopted was to seek a court hearing to obtain custody of the child. The findings of the national surveys highlight an issue considered in more detail in Chapter 29, *Intervention Strategies*, namely, that there are operationally different approaches taken with respect to seeking to assist and protect sexually assaulted children and youths.

Primary Sources of Assistance

The findings of the National Population Survey indicate that most victims of unwanted sexual acts had not sought assistance. Of those who had, the public agencies most frequently turned to were physicians, the police and social services. When the findings of the national surveys of public services are considered, it is evident that in each instance there were distinctively different patterns with respect to how sexually assaulted children and youths either had sought help or had become known to these services. On the basis of the average length of time taken to contact services and of whether most victims and their families had contacted or had been referred by other agencies to a particular helping service, a distinction along operational lines can be made *primary* and *secondary* contact services. Services constituting the former category are those which are promptly and directly turned to by sexually assaulted victims or by

those persons who are responsible for their protection and welfare. In the latter category, secondary contact services, while some victims and their families may immediately turn to these resources for assistance, the major part of their caseload is derived from referrals made either by other professional workers or by cases of sexual assault which have been identified in the course of providing previously initiated services.

The amount of time that passes between the occurrence of an assault and its notification to a public service has a direct bearing on the identification of certain types of physical injuries and whether these conditions are likely to be subsequently confirmed by means of a medical examination. Minor scratches and bruises, for instance, may heal quickly. If forensic evidence is to be obtained with respect to assaults involving intercourse, then a medical examination must be undertaken promptly, and for acts of this kind as well as for those involving anal penetration, a medical assessment is warranted with respect to the detection of whether a victim has contracted a sexually transmitted disease. The usual means by which sexually assaulted children and youths seek assistance or become known to public services and community associations is also a partial measure of the extent and type of co-operation and sharing that occur between the helping services with respect to providing assistance for victims.

While the concept of interdisciplinary professional and public service teamwork in responding to these problems has been widely recognized, there is little documentation for Canada of the extent to which interagency cooperation may occur in practice. In this regard, most of the available reports are unidimensional in the sense that typically only referrals made to a particular agency or service are reported. Drawing on this type of information, it has typically been concluded that certain public services have been remiss or derelict in fulfilling their responsibilities with respect to not having reported known cases of child sexual abuse to other agencies. What is often undocumented in reports of this kind is information about the extent to which there has been a two-way exchange of information.

The decisions taken by victims and their families about whether assistance should or should not be sought are affected by a number of considerations, including: the sexual acts committed; who the assailants were; the nature of the fears, injuries and trauma experienced by victims and the reactions of their families; the types of services actually provided by public agencies; and how these services may be perceived by persons in need of assistance. In this regard, not only the type of public service turned to by victims but as well the length of time taken to seek assistance from them are partial measures of their perceived utility and responsiveness in meeting the needs of victims. On the basis of the findings of the national surveys, a sharp gradient was documented in relation to the average lengths of time between when sexual assaults had been committed and when different types of public services had been contacted, notified or had become aware of the incidents.

Three in five sexually assaulted children contacting the police did so within 24 hours after the incidents occurred, about half of the patients treated at hospitals sought care within a day of having been assaulted, and of cases known to child protection workers, about one in five was identified within this time span. The police and hospitals were notified within a week of about three in four sexual assaults which were respectively investigated and medically examined. In contrast, only a third of the caseload of sexually assaulted children known to child protection services consisted of victims who had contacted these workers within a week of when the incidents had occurred, and for one in three of these cases, more than a year had elapsed.

Time Taken To Report	National Surveys					
	National Police Force Survey		National Hospital Survey		National Child Protection Survey	
	Males	Females	Males	Females	Males	Females
	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent
Immediately	40.3	38.8	4.1	3.6	6.4	10.1
Within 24 hours	18.5	21.4	46.9	43.0	11.1	10.1
Within 1-3 days	8.6	7.3	6.1	11.8	7.9	5.2
Within 4-7 days	6.2	5.9	14.3	10.4	6.3	8.0
Within 1 month	9.9	8.5	8.2	12.3	14.3	11.6
Within 6 months	12.1	9.6	10.2	9.9	20.6	12.7
Within 12 months	3.3	2.9	6.1	2.7	6.3	5.2
Over 1 year	1.1	5.6	4.1	6.3	27.0	37.0
TOTAL	100.0	100.0	100.0	100.0	99.9*	99.9*

* rounding error

On average, there was no marked difference in relation to the lengths of time taken to seek assistance by boys and girls who were victims or by their families on their behalf. In this regard, it appears that it was not the gender of the victim, but the type of assistance sought which affected how much time passed before different public services had been notified. On average, most victims or their families notifying the police or hospitals had contacted these services within a week after the assaults had occurred. This finding suggests that of those victims contacting the police, these services were perceived by them to be accessible and to be an appropriate source of needed and immediate assistance. In contrast, the findings of the National Population Survey together with those of the National Child Protection Survey clearly show that other types of public agencies, including child protection services and many community agencies, were less often directly contacted by victims or their families. When these other types of services were contacted by victims, this usually occurred sometime after the assaults had been committed. Relatively few victims, for

instance, had contacted child protection services on a "walk-in" basis. Much of the caseload of sexually assaulted children cared for by these services was comprised of victims who had been assaulted over a period of time, or whose identities were already known because they or their families were receiving some other form of assistance.

The findings, summarized in Table 7.5, show that strikingly different referral pathways had been taken by victims, or their families on their behalf, in relation to how the three public services had typically been contacted. About four in five sexually assaulted children known to 28 police forces across Canada had either directly sought the assistance of the police, or these contacts had been made on their behalf by their families, friends or acquaintances. Most of these contacts with the police had been made by what may be called a "lay referral system", namely, victims or persons close to them had themselves initiated a request for assistance.

Table 7.5

Initial Referrals to Public Services

Principal Source of Referral	Public Services					
	Police		Hospital		Child Protection	
	Males	Females	Males	Females	Males	Females
	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent	Per Cent
Victim and/or family member	83.0	77.5	31.1	44.3	24.2	26.8
Friends/ acquaintances	4.9	5.3			4.2	3.7
School staff	0.3	2.8	—	0.7	2.5	8.0
Physicians	0.1	0.6	8.1	6.0	—	2.5
Other health workers	0.2	0.3	4.0	5.3	5.0	4.2
Child protection/ social services	4.1	5.6	24.3	18.4	34.1	40.0
Police	2.1	0.9	32.4	24.4	10.0	10.5
Rape Crisis/Sexual Assault Centres	—	0.1	—	0.9	—	0.7
Other sources	5.3	6.9	—	—	20.0	3.6
TOTAL	100.0	100.0	99.9*	100.0	100.0	100.0

* rounding error

In contrast, proportionately fewer sexually assaulted patients examined at hospitals had sought medical care on a "walk-in" basis. About two in five patients or their families (42.6 per cent) had initiated these contacts with hos-

pitals. In comparison to contacts with the police or hospitals, proportionately fewer victims or their families had directly contacted child protection services. Less than a third of the sexually assaulted children and youths (30.5 per cent) known to these agencies had directly sought this type of assistance themselves.

Different lines of communication were found to exist between different public services and community agencies. Teachers and other school staff, for instance, were seldom reported to have referred cases to the police or hospitals, the services most commonly turned to directly by victims. However, one in 12 (8.0 per cent) female victims known to child protection services had been referred by school personnel. In light of the proportion of sexually assaulted victims seeking medical care whose experience was documented in the National Population Survey, few referrals made by physicians, even to hospitals, were reported in the national surveys of public services.

Only one in 17 girls (6.0 per cent) and one in 12 boys (8.1 per cent) treated at hospitals had been referred by physicians. In the three national surveys, a total of 73 referrals to public services had been made by physicians. Overall, other types of health workers were just about as likely as physicians to make referrals to the police, hospitals and child protection services.

Of cases of child sexual abuse referred to police forces, one in 18 (5.6 per cent) involving girls and one in 24 (4.1 per cent) involving boys had been initiated by child protection services. Between one in four (24.3 per cent, boys) and one in five (18.4 per cent, girls) patients examined at hospitals had been referred by child protection workers. Of cases known to child protection services, a third of the boys (34.1 per cent) and two in five of the girls (40.0 per cent) had been referred by other social services or had become known as a result of ongoing casework. Overall, a quarter of cases (26.7 per cent) involving boys and a third (34.3 per cent) involving girls were cases which were already open or for whom other types of assistance were being provided.

Only a small proportion of the cases of child sexual abuse reported to the police involved referrals from other police forces. When this happened, these referrals were usually made by federal and/or provincial forces to municipal forces, or by military to civilian forces. A third of sexually assaulted girls (32.4 per cent) examined at hospitals had been referred by the police. One in 10 referrals for victims of both sexes known to child protection workers had been initiated by the police.

Summary

When the findings concerning the lengths of time taken by victims to notify public services and the patterns of interagency referrals are considered with those concerning the types of association between victims and assailants and the nature of the sexual acts committed, it is evident that three distinctive groupings of sexually assaulted children and youths are served respectively by the police, hospitals, and child protection services and other community agen-

cies. The group of victims known to the police constitutes the broadest cross-section in relation to the types of first sexual assaults reported by persons in the nationally representative sample of the Canadian population. Most of the cases investigated by the police had been initiated by victims or by their families and friends, and most of these contacts had been made relatively soon after the assaults had been committed.

The findings of the National Population Survey indicate that when sexually assaulted victims had sought medical care, they had turned to hospitals and physicians in community practice with equal frequency. No information was directly obtained about the patients treated by community physicians, although their reported referrals to various public services were documented. Of the sexually assaulted patients whose experience was documented in the National Hospital Survey, a majority had sought care relatively promptly, and in comparison with the proportional distribution of sexual acts known to the police and child protection services, more medically examined patients had been victims of acts of vaginal and anal penetration, or of attempts made to commit these kinds of sexual acts. The two main sources of referrals of victims to hospitals consisted of those which they or their families had initiated, or of those made by public services and professional workers.

In comparison to how victims became known to the police or hospitals, most of the contacts by sexually assaulted children known to child protection workers had been initiated by what may be termed a 'professional referral system'. A majority of these victims had been assaulted by family members or relatives and a sizeable proportion of the incidents had occurred weeks, or even months, before they became known to child protection workers.

In the Committee's view, the complex problems and risks experienced by sexually assaulted children and youths require the effective investigation, care and protection afforded by several of the helping professions, notably the police, physicians and child protection workers. The help afforded these young victims optimally involves sensitive and caring attention provided by as few persons as possible whose efforts are strongly complemented by other requisite services to ensure the best possible treatment and protection for the child.

The general findings of the Report consistently underscore the need for a more comprehensive and integrated approach to the care and protection of sexually assaulted children and youths. Elsewhere in the Report, a number of co-operative interdisciplinary and/or interagency programs are described which have been established in different regions of Canada in order to provide assistance and protection for victims of sexual assault. On the basis of the Committee's research findings, it is evident that little is known about which of these different types of programs most effectively benefit and protect sexually assaulted children.

In this regard, the findings presented in this chapter strongly support the Committee's recommendations about the need for more complete documentation about the operation and effectiveness of existing interdisciplinary and/or

interagency programs, for the education of professional workers and for informing the public about the availability of different services.

The significance for social policy of these findings is that if better protection is to be afforded children and youths who are victims of sexual assault, the Committee believes that this purpose is more likely to be achieved by a realignment and strengthening of those public services which are the most frequently turned to and trusted than by the extension of infrequently used services or the establishment of new programs.

References

Chapter 7: Dimensions of Sexual Assault

[1] Metropolitan Chairman's Special Committee on Child Abuse, *Developing a Comprehensive Response to Child Sexual Abuse*. Toronto, 1982.

[2] Metropolitan Toronto Board of Commissioners of Police. *Task Force on Public Violence Against Women and Children*. Preliminary Report, Appendix A, 1983.

[3] Radzinowicz, L., *Sexual Offences. A Report of the Cambridge Department of Criminal Science*. English Studies in Criminal Science. Volume IX. London: MacMillan and Co., 1957, Chapter 6.

[4] *Ibid.*, pp. 100-101.

[5] Kinsey, A.C., W.B. Pomeroy, C.E. Martin and P.H. Gebhard, *Sexual Behaviour in the Human Female*, Philadelphia: W.B. Saunders Co., 1953, p. 117.

[6] *Ibid.*, 122.

[7] Radzinowicz, L., *op cit.*, p. 104.

[8] Messier, C. and G.M. Martin, *L'enfance Maltraitée, ça existe aussi au Québec*. Montréal: Le Comité de la protection de la jeunesse, ministère de la Justice, 1981.

[9] Canada. Department of the Solicitor General. *The Greater Vancouver Victimization Survey*. Ottawa: Department of the Solicitor General, 1982.

[10] Brickman, J., J. Briere, A. Langen, M. Shepherd and M. Lofchick, *Winnipeg Rape Incidence Project: Final Results*. Winnipeg, 1980.

[11] Kinnon, D., *Report on Sexual Assault in Canada*. Ottawa: Advisory Council on the Status of Women, 1981.

[12] Kinsey, A.C., W.B. Pomeroy and C.E. Martin, *Sexual Behaviour in the Human Male*, Philadelphia: W.B. Saunders Co., 1949, p. 173.

[13] Radzinowicz, L., *op cit.*, pp. 89-90.

[14] Canada. Department of National Health and Welfare. *Summary of Results: Gallup Youth Omnibus Survey*. Ottawa, 1982.

[15] Radzinowicz, L., *op cit.*, pp. 98-100.

[16] Kinnon, D., *op. cit.*, pp. 28-29.

[17] Clark, L. and D. Lewis, *Rape: The Price of Coercive Sexuality*. Toronto: Women's Educational Press, 1977.

[18] Kinnon, D., *op cit.*, p. 31.

Chapter 8

Acts of Exposure

In contrast with other sexual offences, acts of exposure do not involve physical contact between an offender and a victim. In the study of sexual offences, the term, "exhibitionism", is typically defined as a means of obtaining sexual gratification involving the exposure by a male of his naked body and/or genitalia to a female. In most clinical studies, it is concluded that exhibitionists do not intend to touch or sexually molest their victims. When acts of exposure are committed, there is usually some distance between the offender and his victim(s). The exposure of the genitalia may be partial or complete and the act may also involve masturbation. Part of the gratification that offenders are believed to seek derives from the reactions of their victims which may range from annoyance and surprise to shock and fear.

Section 169 of the *Criminal Code* provides that it is a criminal offence wilfully to commit an indecent act in a public place in the presence of one or more persons, or in any place with intent to insult or offend any person. In section 138 of the *Criminal Code*, a "public place" is expressed as including any place to which the public has access as of right or by invitation, express or implied. Where, for example, a male person in a public place exposes his genitals to unsuspecting passers-by, the section 169(a) charge is made out. Where the same act occurs in a place other than a public place (hereinafter referred to as a "private place"), however, the defendant's intent to insult or offend any person must be proved. The offence of indecent act is thus concerned to regulate both acts of a publicly offensive nature, regardless of the individual's intent and acts, wherever committed, where the individual intended to insult or offend any person.

A number of different sexual acts and situations can be dealt with under the section of the *Criminal Code* which proscribes the committing of indecent acts. Accordingly, the listing of the offence of indecent act in police and crime statistics is not a useful source by itself in documenting this type of sexual act. What is required is the specific identification of the acts committed. Some of the elements of an indecent act, as set out in the *Criminal Code*, are that these acts are committed "in a public place in the presence of one or more persons," or "with the intent thereby to insult or offend any persons". No definition is given in this section of the *Criminal Code* of the exact nature of the type of act

which may insult or offend another person. In this regard, the current criminal offence under which acts of genital exposure are typically charged (section 169 of the *Criminal Code*) applies to very different sorts of behaviour, for example, running naked down a city street as a prank ("streaking") or baring one's buttocks as a prank ("mooning" or more forcibly, "chucking a moon"). Under the terms of this section, such acts may be committed by members of either sex and victims may be males or females.

The offence of "gross indecency" in section 157 of the *Criminal Code* may also give rise to a public place/private place legal controversy. Although the location of the act is not an element of this offence, where both parties are over 21 and the consensual act occurs in private, this is a complete defence for both accused. Since the "private" nature of the consensual act is only relevant where both parties are 21 or older, it has no relevance to consensual acts in private involving a young person (i.e., a person 20 or younger). Accordingly, no special analysis is provided in this regard for occurrences of "gross indecency".

In medical research, the definition of "exhibitionism" which is widely adopted rules out situations where an exposure occurs as part of other activities, such as swimming in the nude, undressing immediately before consensual sexual activity or as a prelude to a sexual assault. Where an exposure precedes a sexual assault, it is usually subsumed within the more serious sexual offence. The medical definition of exhibitionism specifies that only males commit these acts and that victims are exclusively females. Acts of exposure by males to male victims are excluded, by definition, and may be considered pedophilic acts undertaken to have physical sexual contact with a male child or youth. The clinical definition also excludes acts where parts of the nude body other than genitalia are exposed.

A distinction can be made between acts of exposure where an offender actively seeks out victims, and those where an offender exposes his genitalia or masturbates and is observed by another person. In the former type of act, an exposer deliberately seeks out victims, while in the latter instance, a victim happens to observe an offender standing naked at a window or exposing his genitalia while lying in a park.

In order to avoid confusion with respect to terms previously assigned special meanings, such as indecent acts and exhibitionism, the term "exposure" is used in this Report to denote the display of a nude body and/or genitalia to another person.

In its research, the Committee found that acts of exposure constituted a sizeable proportion of all sexual crimes committed against children and youths. Two types of situations were reported which fell outside of the clinical definition of exhibitionism. These incidents included: a few cases of exposure to boys; and a number of separate acts of exposure which preceded a sexual assault against the child.

In the cases of exposures to boys, there was no reported physical contact between offenders and victims. For this reason, it would have been inappropriate to group these acts in the analysis of sexual assaults against children, as while it may have been the intention of these exposers to touch or sexually molest male victims, no physical contact was made. Incidents of this type are usually considered to be part of the sequence of sexual behaviour that comprises homosexual pedophilia, and from this perspective, they would be set aside as not being true cases of exhibitionism. In this context, one study on exhibitionism noted "the limited usefulness of legal and criminological statistics as indicators of clinical entities, since clinically the term exhibitionism only applies to males."[1]

The Committee's findings indicate that acts of exposure to boys do in fact occur and that, for whatever reasons, they are not followed by an assault. The occurrence of these acts cannot be ignored merely because they do not conform to a particular definition. Rather than attempting to presume what the intentions of these exposers might have been, findings about these incidents are presented with the review of acts of exposure to girls.

The medical definition of exhibitionism that is commonly used specifies no bodily contact occurs between an offender and a victim. In one report, for instance, this act is defined as "the expressed impulse to expose the male genital organ to an unsuspecting female as a final sexual gratification", and it is further noted that "exposure is the final act and *not* a prelude to other acts".[2] When acts of this kind are committed, the assumption is that there is usually some distance between offenders and victims.

In the Committee's research, a number of instances were reported where an act of exposure was subsequently followed by an attempt to touch or assault a child. In reviewing these incidents, it was apparent that two discrete acts had been committed. Incidents involving undressing or exposure by an offender as a prelude to an assault were excluded from this group of offences. Incidents of this kind are reported in Chapter 9 *(Exposure Followed by Assault).*

Because substantially more cases of acts of exposure were documented in the population and police force surveys than in those of hospital and child protection services, the Committee's main findings on these acts are taken from the first two national surveys, and particularly from the National Police Force Survey where the most detailed findings were available. These two national surveys provide information on the experience of a representative sample of Canadians and of the public agency to which many of these incidents are reported. The Committee's findings on acts of exposure differ from the sources of information drawn upon in a number of other reports of this offence in relation to: documenting directly the experience of children and youths who have been victims; the use of a uniform definition in the national surveys about specific sexual acts committed; and the number of cases for which information was assembled. As there appears to have been relatively little research dealing directly with the experience of children who have been exposed to, the findings in this chapter, where appropriate, are compared with the results of four main

studies on these offences, two of which were undertaken in Canada. These studies are:

1. *1956-59 Toronto Forensic Clinic Study.* A total of 54 exhibitionists referred by courts between 1956-59 to the Forensic Clinic of the Toronto Psychiatric Hospital;[3]
2. *1957 British Study of Sexual Offences.* Part of a larger English study of sexual offences, this definitive report assembled information on 786 cases of indecent exposures brought before courts, 389 of which had girls under 16 years of age as victims;[4]
3. *1961-62 Toronto Police Force Study.* Part of a larger review of sexual offences, a total of 125 cases of persons charged with having committed indecent acts by the Toronto Police Force were studied, of which 87 were exhibitionistic acts.[5] The ages of 70 victims of these acts were reported, of whom 36 were 14 years-old or younger; and
4. *1965 U.S. Study of Convicted Sex Offenders.* One of a series of reports from the Institute for Sex Research established by A.C. Kinsey, a comprehensive analysis of convicted sexual offenders, of whom 288 were exhibitionists.[6] Of this number, 49 males had exposed to girls 15 years-old or younger.

None of these studies obtained information directly from victims themselves. In each instance, such information was derived from official records or had been reported by the offenders.

Case Studies

The case studies of acts of exposure to children taken from the National Population Survey and the National Police Force Survey illustrate the types of situations in which these offences are committed.

- *Nine year-old girl.* While walking down a street, this girl was called over to the suspect's car parked at the curb. He asked if she wanted a sausage with cream on it. The suspect then raised himself and exposed his penis.
- *11 year-old girl.* As she was walking along a path, she saw a male jogger wearing shorts who was running towards her. He stopped abruptly in front of her, pulled down his shorts and exposed his penis. He asked if she had ever seen a penis. The girl fled.
- *Eight year-old boy.* While walking home from school, this boy cut through a laneway where a small car was parked. The driver called the boy and then exposed his penis. The boy ran.
- *12 year-old girl and friend.* As these children were walking along a street, they were approached by a man who stopped in front of them. He unzipped his trousers, exposed his penis, masturbated and moved closer to them. The girls asked if he was having "fun". He replied "yes", and then he fled.
- *33 year-old printing shipper.* When she was three, her godfather who worked for a hydro company exposed to her. Later, when she was 22, she wrote: "I did tell my husband. He phoned the police, but no action was

taken. There are a lot of us women. If nothing was done years ago, it sure won't change now. It is always the woman's fault, no matter what she looks like."

- *14 year-old girl.* This teenager was sitting in a bus shelter when a man entered. After pacing up and down, he opened his trousers, pulled out his penis, pointed it at her and said "do you want to play with it?" The girl fled.
- *11 year-old boy.* While he was fishing by a stream in a ravine, a stranger approached, pulled down his trousers, and exposed his penis. He asked the boy "do you like it?" The boy told him "to get lost" and then he fled.
- *Group of boys and girls, ages 4-6.* The children were playing in the yard of a daycare centre when the suspect, a male, jumped over the fence. He was nude. Although he was laughing, the children said he was trying to scare them. The attendant chased him away.
- *Nine year-old girl.* As this girl was returning home to the apartment building where she lived, she saw a man lounging by the front door. He mumbled something she didn't hear, so she stopped. He asked her if she would like to earn $10 by helping him move an air conditioner. As he was saying this, he lowered his trousers and exposed his penis.
- *29 year-old collection officer.* When she was nine, she was exposed to by a stranger; a week later she told her mother. "This has also happened to another member of my family. The police said these people have to be caught in the act to press charges".
- *15 year-old girl and two friends.* These teenagers were sitting on a park bench when they were approached by a 20 year-old male. He stopped in front of them and exposed his penis. The girls told him "to beat it". He didn't and continued to expose himself. He left after a few minutes.
- *46 year-old car inspector.* When he was 15, his girlfriend exposed herself. "The girl wanted me to make love to her, but I never did."
- *13 year-old girl and friends.* These children were about to enter a variety store when they heard a yell from a person in the alley beside the store. When the girl looked around the corner, she saw a man exposing himself and smiling at her.
- *Nine year-old boy.* While this boy was playing in the corridor of the apartment building where he lived, a man entered the corridor with his penis exposed. The boy ran.
- *Seven year old girl and a friend.* These children were walking along the street when the suspect approached them. When he opened his raincoat, they saw that his trousers were tied around his thighs and that his penis was exposed.
- *13 year-old boy.* Upon entering the elevator in the apartment building where he lived, this boy found a man was already in it. When the doors closed, the man pulled down his trousers and exposed himself. The boy pushed the button for the nearest floor, and when the doors opened, fled.
- *13 year-old girl.* On her way home from school, a car slowed down and stopped beside her. The driver asked for directions. When she leaned into the car, she saw that he was masturbating.

- *Eight year-old girl.* When she was playing in a park with friends, this child saw a man sitting on a bench. As she walked past him, he raised the paper from his lap and exposed his penis.

In these accounts, victims engaged in routine daily activities were typically taken by surprise. These young victims had been usually approached by a stranger who either did not speak to them, or if a conversation occurred, the questions initially asked dealt with innocuous issues. Once the attention of the child or youth had been attracted, the offenders, almost invariably older males, exposed their genitalia. There were few instances reported in the national surveys of exposers who were completely nude. In about one in 10 cases, the offender both exposed his penis and masturbated. The case studies show that acts of exposure are made to both boys and girls and to groups of children. There is no indication in these accounts that, in incidents where boys were victims, there was a confusion about the identity of the boys' sex on the part of exposers.

In most cases where children had been victims, the offenders had deliberately approached them or actively sought to attract their attention. It is evident from the case studies that exposers frequented places, usually streets or parks, where children were likely to pass by or congregate. While the children were taken off-guard by the unexpected nature of these incidents, most of them immediately fled. In a few instances, the children made fun of, or disparaged, offenders, and a few were likely too young at the time to realize the meaning of what had happened. The case reports also show, a finding confirmed by the results of the national surveys, that children of all ages may be victims of acts of exposure, with some being very young children.

Extent of Occurrence

Each person contacted in the National Population Survey was asked, "Has anyone ever exposed the sex parts of their body to you when you didn't want this?" Persons replying affirmatively were further asked how old they had been when acts of this kind had first happened to them and to specify which parts of the offender's body had been exposed, including: penis, woman's crotch, breasts, buttocks, nude body and "other–specify".

The results of the National Population Survey summarized in Chapter 6 indicate that **about one in seven persons (14.3 per cent) had been a victim of at least one act of exposure during his or her lifetime and that females (19.7 per cent) were twice as likely as males (8.9 per cent) to have been victims.** If the findings of this nationally representative sample are prorated as a basis for estimating the occurrence of acts of exposure against all Canadians, then several million persons may have been victims of these kinds of acts.

Sex of Victims

It has been consistently reported in the research on acts of exposure that only females are victims and that none is subsequently sexually assaulted. An inherent assumption underlying this research is that the intent of an exposer is known when such an act is committed. In incidents where a female is the victim, it is assumed that the act is the final sexual gratification for the offender and that he has no intent of subsequently committing an assault. Conversely, in incidents where males may be victims, the assumption is made that such acts are a prelude to an intended or actual touching or assault.

When an act of exposure occurs, it is unclear from available research reports: how often the acts involve only exposure; how often they are followed by an assault; or how often this sequence may be interrupted by the reactions of victims or detection by other persons. Since each of these situations happens, their subsequent classification as acts of exhibitionism, homosexual pedophilia or other types of offences involves a retrospective assumption about the intentions of offenders which are often unknown since many exposers are not apprehended.

An anomaly in this research is that it deals almost exclusively with the experience of female victims. There is no similar body of research which documents acts of exposure committed by offenders against males, whether these acts involve only exposures, or whether they are a prelude to a touching or assault. When such findings have been reported, they have been discounted as errors of classification. Until information is available on all types of acts of exposure, it cannot be assumed *a priori* that: only females and no males are the victims of acts of exposure; when these acts are committed against females, no subsequent sexual assault is intended or committed; and when males are victims, acts of exposure are invariably a prelude to a touching or an assault.

In the national surveys undertaken by the Committee, information was obtained about whether exposure of genitalia and the nude body had occurred and the findings obtained indicate that in each of these surveys both males and females were reported to have been victims of these acts.

In comparison to the findings of the National Population Survey, proportionately more females and fewer males were reported to have been victims of acts of exposure in the three national surveys of public services. The smallest proportion of male victims, about one in 13, was reported in the National Police Force Survey; two in three (66.4 per cent) had been recorded as indecent assault male. Since much of the research on acts of exposure has been based on an analysis of the offence of indecent act, the results given here may partially explain the widely held belief that offences of this kind are not committed against males. The findings of the population and police surveys with respect to the sex of victims are confirmed by the findings of the hospital and child protection surveys where respectively it was found that one in six (17.5 per cent) and one in nine (10.7 per cent) victims were males.

National Survey	Acts of Exposure	
	Male Victims	Female Victims
	Per Cent	Per Cent
Population	31.0	69.0
Police Force	7.5	92.5
Hospital	17.5	82.5
Child Protection	10.7	89.3

The results of the national surveys confirm the findings of other studies that females are predominantly the victims of acts of exposure. While the number of incidents involving boys is small, this finding is unexpected in light of the results of most research reports on exhibitionism. The findings indicate that acts of exposure are committed against boys which are not followed by an assault.

Age Distribution

In the research on exhibitionism, it has generally been found that between one in five and one in two victims are children. Depending upon the source of the information, the age range of the children has varied, but instances have been reported where children two years or younger have been exposed to by an offender. In the cases documented in the National Police Force Survey, the average age of the children who were age 15 years or younger was 11.3 years for girls and 9.8 years for boys. Proportionately more younger boys than younger girls were the victims of acts of exposure, with one in five boys (20.5 per cent) and one in 15 girls (6.5 per cent) having been six years-old or younger. Some of these children were infants. Among the young girls, three were two years-old or younger; eight were three years-old; 13 were four years-old; 29 were five years-old; 46 were six years-old; and 71 were seven years-old.

Less than half of the girls (45.4 per cent) who had been exposed to were 11 years-old or younger, while over half (54.6 per cent) were between 12 and 15 years-old. In contrast, about one in nine of the boys (11.5 per cent) who were 14 and 15 years-old had been exposed to by another person.

The findings of the National Population Survey indicate that **a majority of the victims of acts of exposure were children or youths when these kinds of acts had been committed against them for the first time.** Accumulatively, about half of the victims had been under 16 years-old, two in three had been under 18 years-old and five in six had been under 21 years-old. Only one in six victims had been an adult when he or she had been exposed to for the first time.

Time of Occurrence

As was the case for sexual assaults against children, there were seasonal and time-of-the-day variations when acts of exposure were committed. Depending upon the sex of the victim, the trends were somewhat different for acts of exposure and sexual assaults. There was a somewhat more uniform seasonal distribution of acts of exposure than of assaults when girls were victims, and during the summer and autumn months, proportionally more boys had been exposed to than had been sexually assaulted. Also, unlike the relatively even distribution of sexual assaults occurring during the days-of-the-week, proportionately more acts of exposure were clustered during weekdays with fewer reported on weekends.

The 1961-62 study of the general occurrence records of the Toronto Police Force found that the seasonal distribution of indecent acts was "more or less random."[7] However, there was a peaking in the occurrence of these offences during the summer months (31.5 per cent). In the present study undertaken two decades later, a similar peaking in the number of acts of exposure reported to the police occurred during the summer months.

Seasons	Males Exposed to	Females Exposed to
	Per Cent	Per Cent
Spring	23.7	26.6
Summer	33.9	28.5
Autumn	26.3	25.4
Winter	16.1	19.5

Not unexpectedly, cold Canadian winters are a partially effective deterrent which afford protection to children from acts of exposure. With the exception of this season, the results suggest that children are at risk of being exposed to all times of the year.

In the day-of-the-week reporting of sexual assaults to 28 police forces across Canada, there was a relatively random occurrence of these offences with a slight peaking occurring on Saturday. In contrast, acts of exposure reported to the police occurred more frequently on weekdays and less often on weekends than did assaults against children.

For both boys and girls, four in five offences happened between Monday and Friday, a trend comparable to the results (85.7 per cent) of the 1961-62 Toronto study of persons charged by the police for having committed these acts.[8]

Day of Week	Males Exposed to	Females Exposed to
	Per Cent	Per Cent
Sunday	10.4	8.1
Monday	8.6	14.8
Tuesday	25.0	15.4
Wednesday	11.2	17.8
Thursday	18.1	16.2
Friday	17.2	16.4
Saturday	9.5	11.3

In contrast with the time-of-the-day occurrence of sexual assaults against children, of which about three in five occurred during the morning and afternoon, four in five (80.7 per cent) acts of exposure were committed during daylight hours. These results are hardly surprising, since this is the time of the day when children play outside their homes or travel to and from school.

Time of Day	Males Exposed to	Females Exposed to
	Per Cent	Per Cent
Morning (5 a.m. — 12 p.m.)	15.5	16.4
Afternoon (12 p.m. — 6 p.m.)	63.6	64.4
Evening (6 p.m. — 10 p.m.)	15.2	16.2
Night (10 p.m. — 5 a.m.)	2.7	3.0

Although slightly different time-of-the day periods were used in the 1961-62 Toronto Police Force study[9] and the National Police Force Survey, the results of the two studies are comparable. In both instances, most of the acts of exposure occurred during the daylight hours.

Where the Offences Occurred

The classification of locations where acts of exposure occurred is identical to the listing of locations used in the review of sexual assaults against children. In this listing, a private place was defined to include: the residences of victims, suspects or offenders and third parties; and an assortment of other places, such as hotel or motel rooms. All other locations where these acts were committed are considered to be public places generally accessible to all persons.

There is a broad agreement in the research on acts of exposure that a majority of these offences are committed in "open" places or involves offenders exposing themselves at windows or doors facing other houses or streets. When only acts of exposure to females are considered (for purposes of comparability), the results of several of the main studies on these offences are remarkably similar in relation to the proportion of acts reported to have been committed in open places. These findings are given in Table 8.1. When the categories of Open Spaces, Streets/Laneways and Other Places are grouped together, the proportion of acts of exposure occurring in these locations was:

- 77.1 per cent — 1957 British study
- 74 per cent — 1956-59 Toronto Forensic Clinic study
- 73.9 per cent — 1961-62 Toronto Police Force study
- 74.3 per cent — National Police Force Survey

The comparability of these results confirms that three in four of these acts occur in open places. However, the results differ sharply in terms of where the remaining one in four acts had occurred. The two larger studies (1957 British study and the 1981-82 National Police Force survey) found respectively that 6.9 per cent and 5.3 per cent of the acts were committed from an offender's car. In contrast, the two smaller studies (1956-59 Toronto Forensic Clinic and 1961-62 Toronto Police Force study) reported that between 30 and 41.3 per

Table 8.1

Location of Acts of Exposure to Females[1]

Location of Acts	Research Report			
	1957 British Report (n=462)	1956-59 Forensic Clinic (n=54)	1961-62 Toronto Police (n=92)	National Police Force Survey (n=1,495)*
	Per Cent	Per Cent	Per Cent	Per Cent
Open spaces	30.5	8.0	15.2	23.8
Streets	46.6	36.0	17.4	50.5
Houses:				
• Within houses	2.6	11.0	18.5	8.5
• From houses	10.8			
Vehicles	6.9	30.0	41.3	5.3
Other Buildings, Places	2.6	13.0	7.6	11.9
Total	100.0	98.0	100.0	100.0

[1] For comparability with other reports, only the experience of female victims is given from the National Police Force Survey.

*No listing of location for 7 cases.

cent of the offences had been committed by offenders who were in cars. Based on its findings that about a third of the exposures had occurred from an offender's car, the 1956-59 Toronto Forensic Clinic study concluded that:

> "the compulsion to exhibit is greater than the fear of police or court . . . offenders exposing from a car leave a visiting card behind them in the form of their licence number."[10]

Findings such as these have been drawn upon by several observers to support the conclusion that when the impulse to expose occurs, it is unrestrained and transcends any rational concern or fear of being caught while the person is committing the act. Indeed, it has been suggested that some of the offenders may even wish to be apprehended.

The differences between these research findings in relation to the proportion of offenders exposing themselves from vehicles may be partly accounted for by the differences in the ages of the victims studied and by the fact that in two larger studies, the experience of children who were victims was documented for a number of different cities and towns. Children who were female victims constituted: 49.5 per cent of 786 victims in the 1957 British study; 41.8 per cent of 55 victims in the 1956-59 Toronto Forensic Clinic study; 51.4 per cent of the victims in the 1961-62 Toronto Police Force study; and (excluding 122 male victims), all (100.0 per cent) of the 1,502 victims under age 16 in the National Police Force Survey. With respect to these age differences, it may be the case that more exposures to adult females than those to children occur from vehicles.

In the case of the two smaller studies, how the cases were selected may also partially explain the differences that were found. In one instance, the study group comprised offenders referred for psychiatric assessment. In the second study, the cases were selected from the records of one police force on the basis of persons charged with having committed indecent acts.

Neither the findings of the 1957 British study nor the National Police Force Survey appear to support the conclusion that exposers wished to be caught or were unconcerned about hiding their identities. In both studies, only between one in 15 and one in 19 of the exposures were committed from an offender's vehicle. These findings suggest that in many instances the impulse to expose, while being reported to the police to have occurred in a public place, may not have been done with the intent of being caught or of leaving "a visiting card". An implication of these results is that many exposers knew what they were doing, for as the 1956-59 Toronto Forensic study noted: "the deviation is not a symptom of mental illness or mental defectiveness".[11]

About one in four acts of exposure was committed by exposers in private or public buildings. In the 1957 British study, 2.6 per cent of the exposures to females were in private houses, and 10.6 per cent were exposures by offenders from private dwellings to female neighbours in other houses or to females passing by. In the 1956-59 Toronto Forensic Clinic study, about one in nine acts occurred in private dwellings or emanated from these locations to persons in

other houses or on the street. Allowing for the differences in the classification of locations in these studies, the results of the National Police Force Survey were of the same order, with 8.5 per cent of the acts against girls under 16 years-old reported to have occurred in or from private places.

Of acts of exposure reported in the National Police Force Survey, about three in four acts against girls occurred in open places, while among the considerably smaller number of male victims, about two in three acts had been committed in similar locations. Girls were about twice as likely as boys to be exposed to on the street and, with one exception, girls were the victims of all exposures committed by offenders from vehicles.

Of exposures to girls, nine in 10 were committed in public places, and one in 12 (8.5 per cent) in private places. In contrast, among the much smaller number of boys, one in six acts (15.7 per cent) occurred in private places. While the proportion of the incidents committed in private places is small, it serves as a reminder that not all acts of exposure are committed in public places.

Types of Acts

In the National Population Survey, the victims of acts of exposure were asked to specify which parts of an offender's body had been displayed when the incidents occurred. The results obtained are non-accumulative since when acts of this kind are committed, more than one part of an exposer's body may have been uncovered.

Parts of Body Exposed to Victims	Victims of Acts of Exposure		
	Male Victims	Female Victims	Total
Penis	45.0	98.8	82.5
Woman's crotch	33.3	4.7	13.4
Breasts	55.9	7.8	22.4
Buttocks	49.5	19.2	28.4
Nude body	51.4	16.9	27.3

When acts of exposure are committed, the penis is the part of the body that is most frequently displayed. Exposure of the male genitalia occurred in virtually all acts (98.8 per cent) against females and in over two in five (45.0 per cent) incidents where males were victims. The exposure of the nude body occurred in about one in six incidents (16.9 per cent) where a female was a victim and in about half (51.4 per cent) of the exposures to males.

In contrast to the small proportion of female victims who reported the exposure of buttocks and breasts, about half of the male victims reported the display of these parts of the body. Less than one in 20 female victims reported

that a woman's crotch had been exposed, while acts of this kind were reported by one in three male victims.

Age and Sex of Exposers

It is a widely held belief confirmed by available research reports that acts of exposure are primarily committed by males against female victims. In contrast to this assumption, the findings of the national surveys indicate that both males and females may be exposers and that persons to whom exposures may be made are of both sexes.

In the National Population Survey, it was found that on the basis of the types of acts committed that about one in 13 exposures to females had been by females, and in the instance of exposures of a female's crotch, one in 20 females who had experienced any type of exposure reported that this type of sexual act had occurred to them.

Of the much smaller group of males reporting exposures, over half indicated that females had been involved in these acts and one third reported the unwanted exposure of a female's crotch. Overall, the findings of the National Population Survey indicate that of all persons reporting exposures, about four in five (77.6 per cent) had been by males and one in five by females (22.4 per cent).

When the findings of the National Population Survey are compared with those of the National Police Force Survey, a striking shift occurs in relation to the sex ratio of reported exposers. In the latter national survey, the overwhelming preponderance of persons committing acts of exposure to children were reported to be males (99.6 per cent). Considered together, the findings of the two national surveys suggest that while exposures committed by females occur, relatively few are reported to the police. The findings of the National Population Survey show that male victims are much less likely than female victims to notify authorities of any type of sexual offence committed against them, and the findings on exposures appear to confirm this general trend. What remains insufficiently documented is the nature of the situations in which these different types of exposures may occur, the intentions of male and female exposers and the reactions and consequences for persons involved in these acts.

In two studies on exhibitionism conducted in Toronto between 1956-59 and 1961-62, it was found that most exhibitionists were young men. In the 1956-59 study, 74 per cent of exhibitionists were under 30 years-old and a bimodal age distribution was noted with peaks occurring in the late teens and in the early thirties.[12] In the 1957 British report, 6.5 per cent of the exhibitionists were between 14 and 16 years-old and 6.5 per cent were between 17 and 20 years-old.[13]

Somewhat comparable findings to the trends noted in earlier research reports with respect to the ages of exposers were found in the National Police Force Survey.

Age of Exposers	Males Exposed to (n=104)		Females Exposed to (n=1,309)	
	No.	Accum. %	No.	Accum. %
Under age 18	16	15.4	134	10.2
Under age 29	64	61.5	901	68.8

Because the ages of some exposers who were strangers to victims were unknown, or had not been approximately established, no estimates had been made about the ages of 12.9 per cent of offenders. For cases where this information was available, over two in three exposers (68.3 per cent) were believed to be age 29 or younger with this proportion being higher in incidents having girls (68.8 per cent) rather than boys (61.5 per cent) as victims. These findings do not concur with the stereotype that these acts are generally committed by "dirty old men". Most were committed by young men, of whom one in 10 (10.6 per cent) was under 18 years-old.

Type of Association

In contrast to assailants whose identity is unknown are those strangers whom the victim has seen before, whose place of work may be identified or who can be associated with particular places or events. Instances of strangers who can be identified are so commonplace that this situation is taken for granted. Examples include persons who travel regularly together on a bus, subway or train, the sales staff in stores, newspaper vendors and waiters, among others. In these situations, while the strangers' names are unknown, these persons may nonetheless be recognized and a more detailed identification provided.

When acts of exposure committed by strangers occur, the nature of the association between them and their victims directly affects the likelihood of their being apprehended. In the research on acts of exposure, while there is a consensus that most acts are committed by strangers, a distinction has usually not been made whether their identities are known or unknown to victims.

In two Canadian studies on exhibitionism (1956-59 Toronto Psychiatric Forensic Clinic and 1961-62 Toronto Police Force Study), it was found respectively that 92.6 per cent and 94.3 per cent of the acts of exposure had been committed by strangers. The results of the National Police Force Survey on acts of exposure acts were almost identical to those of the earlier reports. Of acts of exposure committed against children reported to 28 police forces, 92.6 per cent of the offenders were strangers. Only a small fraction of these incidents involved family members, friends, persons in positions of trust and persons whom victims knew.

The type of association between the victims and exposers was somewhat different for boys and girls. While over nine in 10 (93.4 per cent) of the expo-

sures to girls had been committed by strangers, this was the case for only about four in five (82.6 per cent) of the acts where boys were victims. While this difference may be partially accounted for by the small number of incidents in which boys were victims, it may also indicate that different circumstances were involved depending on the sex of the child.

Identity of Suspected Offender	Percentage Boys Exposed to	Percentage Girls Exposed to
Acts committed by strangers	82.6	93.4
Identity of suspect unknown	46.7	57.5
Suspect known	53.3	42.5

While the majority (92.6 per cent) of the acts of exposure were committed by strangers, the identity of a substantial number of these persons was known to victims. In the general occurrence records of the 28 police forces, it was reported that in over half (56.7 per cent) of these cases, charges had not been laid because the identity of the suspect was unknown. In the remainder (over two in five — 43.3 per cent), the suspect was known to the police. **The findings indicate that, although most acts of exposure reported to the police were committed by strangers, the identity of the suspected offenders was known in a larger number of incidents of this kind than is often assumed.** As in the instance of sexual assaults committed by a person whom a child knew, in 43.3 per cent of the acts of exposure where the identity of the suspect was known, factors other than the inability of the child to identify these persons determined whether charges were laid.

Exposure by Groups

Based on the clinical assessment of exhibitionism, the general assumption has been that acts of exposure to females are committed by males who are alone. Acts of exposure committed by these males are believed to be a means of achieving sexual gratification. These men are clinically assessed as being lonely persons unable to achieve adequate sexual relations with females. It is also believed that these persons act impulsively. In this regard, an act of exposure is an outlet for pent-up sexual frustration which cannot be achieved by socially accepted means. The age or appearance of the victim is believed to be secondary to the fact that she is an accessible female who serves merely as an object of sexual release.

Based on the review of the major studies on exhibitionism, it was expected that all of the acts of exposure against children would have been committed by males who were alone. In a majority of the cases of exposure reported in the National Police Force Survey, this assumption was valid. Well over nine in 10

(98.5 per cent) of exposures against children 15 years-old or younger were committed by offenders acting alone. This proportion was somewhat higher than that of sexual assaults against children committed by single assailants who were alone (93.8 per cent).

Number of Suspected Offenders	Males Exposed to		Females Exposed to	
	Number	Per Cent	Number	Per Cent
One	117	95.9	1482	98.7
Two	4	3.3	12	0.8
Three	1	0.8	2	0.1
Four	—	—	2	0.1
Not Reported	—	—	4	0.3

An unexpected finding in the review of the acts of exposure committed against children was that in 21 incidents two or more males were reported to have exposed themselves to young victims. In the 16 incidents where girls were victims, 12 had two offenders, two had three offenders and two had four offenders. There were five incidents of group exposure to boys. Four of these exposures were by two suspected offenders and there was one instance in which three offenders were involved.

In 19 of the 21 incidents involving group exposure to children, information on the ages of the exposers was available. The age range of these offenders was between nine and 23 with their average age being 16.5 years.

Acts of exposure may serve somewhat different functions when they are committed by two or more persons against a victim. In these instances, it appears that they may be undertaken by a juvenile gang as an initiation ritual, as a means of harassing a victim regarded as aloof or unapproachable or as a prelude to a group sexual assault. In these respects, although exposures occur, they are undertaken neither on impulse nor necessarily as a means of final sexual gratification. Rather, incidents of this kind appear to be premeditated and are likely to be undertaken in order to demonstrate sexual prowess and virility.

Alcohol and Drugs

Exhibitionism is listed under disorders of character and behaviour in the *International Classification of Diseases*, and as a result of this classification, persons who expose themselves are nominally considered to be ill. Despite this inclusion as a form of sexual deviation, the clinical research on exhibitionism suggests that few exposers have identifiable mental disorders. In the 1956-59 Toronto Forensic Clinic Report, none of the 54 exhibitionists was assessed as having a psychotic illness, one patient was diagnosed as psychoneurotic and

nine had disorders of behaviour and character.[15] In the 1965 United States Study of *Sex Offenders*, about three per cent of 288 exhibitionists had had a history of mental disorders.

The findings of these studies suggest that few exposers have identifiable mental disorders. There is less agreement, however, about the extent to which exposers may have been under the influence of alcohol or drugs when they exposed themselves to victims. Sharply contrasting results have been reported on this point; these differences may partially be accounted for by whether the persons studied had only been charged and referred for assessment, or whether they had been sentenced to imprisonment.

In the 1956-59 Toronto Forensic Clinic study, only one exhibitionist (1.9 per cent) was reported to have been under the influence of alcohol when the offence had been committed.[16] In contrast, of the 288 exhibitionists whose backgrounds were reported upon the 1965 United States Study of *Sex Offenders*, nearly a third had been drunk and an additional eight per cent had been partially intoxicated when they had committed the offence. Only three of the exhibitionists in this study of convicted offenders were reported to have been drug-users.[17]

The results of the National Police Force Survey on the extent to which alcohol and drugs were reported to have been used by exposers were comparable to the findings of the 1956-59 Toronto Forensic Clinic Study. The results of both studies suggest that of exposers investigated by the police, few had been using alcohol and drugs before or at the time of the incident. As was the case for sexual assaults against children, this information is based on police reports. It is a reasonable assumption, however, that if the police had known that alcohol or drugs had been used, this information would likely have been reported in their accounts.

Few of the children exposed to were reported by the police to have been drinking or using drugs when the exposures occurred. Of the 1,502 girls under age 16, only nine (0.6 per cent) had been using these substances. Five of the girls had been drinking alcohol, two were using drugs, and two were reported under the influence of both drugs and alcohol. None of the boys was reported to have been drinking or using drugs.

Less than two in 100 exposers (1.7 per cent) were known to have been under the influence of alcohol or drugs. Of the persons who exposed themselves to girls, 21 had been drinking, two had been using drugs, and two had used both substances. In only three cases where boys were victims was it known that exposers had been drinking; none was reported to have used drugs. If these findings are considered only in relation to suspects whose identities the police knew, then 3.6 per cent of the exposers to girls and 4.6 per cent of exposers to boys were reported by the police to have been using alcohol and/or drugs.

On the basis of the findings from the National Police Force Survey, it appears that the use of these substances is seldom a factor serving to loosen the inhibitions of exposers, and thereby, affecting their mental state.

Time Taken to Report Exposures

In the National Police Force Survey, over four in five (84.1 per cent) children exposed to either had contacted the police directly or had told members of their families. While boys were somewhat more likely than girls (52.5 per cent and 39.6 per cent respectively) to tell members of their families, proportionately more girls (13.4 per cent) than boys (3.2 per cent) had turned to friends or told teachers and school counsellors.

None of the children exposed to was reported to have contacted a doctor, nurse or other health worker; there was one instance where a girl had contacted a child welfare worker.

The findings concerning persons who notified the police were generally similar to the identities of those whom children had told immediately following an incident. While the majority of complaints (87.2 per cent) were reported by the victims themselves or by members of their families, there were differences in this respect whether girls or boys had been victims. Perhaps reflecting the fact that girls on average were older than boys, almost half (46.7 per cent) were reported to have directly contacted the police. In about a third (35.0 per cent) of these cases, their families had done so on their behalf. In contrast, less than a third (30.3 per cent) of the boys had gone directly to the police; in over half of the exposures to boys (56.6 per cent), their families had laid these complaints.

Relatively few persons unrelated to children had laid complaints on their behalf. Of girls who had been exposed to, about one in nine of the complaints (10.9 per cent) had been made by friends or school personnel, a proportion one and a half times larger from these sources than incidents in which boys had been involved (6.5 per cent). None of the complaints involving acts of exposure was laid by health workers; there was only one complaint laid by a child protection worker.

In the National Police Force Survey, slightly over half of the cases of sexually assaulted children had been reported to the police within 24 hours after the incidents occurred. In contrast, over nine in 10 (93.9 per cent) of exposures to children were reported to the police within a day of their occurrence with this step having been taken as promptly whether girls (94.1 per cent) or boys (92.0 per cent) were victims. These findings are comparable to the results of the 1961-62 Toronto Police Force Study where it was found that 88.8 per cent of indecent acts involving children and adults as victims had been reported to the police within 24 hours.[18]

"Founded" Exposures

Of acts of exposure in which children were victims, virtually all (99.1 per cent) investigated by the police were listed as "founded" occurrences. This pro-

portion is slightly higher than that involving sexual assaults against children. As was the case with respect to sexual assaults, the findings show that the police trusted the accounts reported by children. There were only 14 incidents listed as "unfounded" occurrences.

Charges Laid

Considering the fact that most acts of exposure had been committed by strangers, it is not surprising that charges were only laid by the police in one in five cases (20.0 per cent). The frequency with which this was done was comparable whether boys (20.5 per cent) or girls (20.0 per cent) were victims. However, as was the case for sexual assaults against children, the fact that more charges were not laid by the police is only partially accounted for by the identity of suspected offenders not being known to the police. The identity of the suspect was known in over two in five cases (43.3 per cent), indicating that in one in five instances, factors other than lack of knowledge of the suspects' identities precluded charges being laid.

Acts of Exposure and Indecent Acts

In the National Police Force Survey, information was obtained about: the types of sexual acts committed against children; the listing of the offences recorded in the police general occurrence records; and the charges laid. For each type of information, more than one item might be reported (e.g., children who were victims of more than one assault, or cases where several charges may have been laid).

In some studies on exhibitionism, the assumption has been made that the listing of the offence of indecent act in police records or charges laid of indecent acts are synonymous with an act of exposure having been committed. On the basis of the findings obtained in the National Police Force Survey, it is evident that the offence of indecent act is on occasion used by the police to include sexual behaviour other than acts of exposure.

Information was obtained in the National Police Force Survey about a total of 6203 sexual offences against children and youths under 21 years-old. Of this total, multiple offences were reported by the police to have occurred in one in 18 incidents (5.6 per cent). In all other cases (94.4 per cent), a single offence was recorded, and it was on the basis of this information that a review was made of the type of offence reported by police in relation to acts of exposure committed. As noted previously, only acts of exposure not associated with other types of sexual offences constitute the acts considered here.

Of all acts of exposure reported to have been committed against persons under 21 years-old, four in five (78.9 per cent) were listed as an offence of indecent act in police records. For slightly more than one in five acts of expo-

sure (21.1 per cent), the police general occurrence records listed other types of offences. The point is reiterated that in none of these instances was there an indication that a child or youth had been touched or assaulted with the information provided indicating that only an act of exposure had occurred.

Acts of exposure where offences other than an indecent act had been listed included the following crimes.

Offences Listed with Respect to Acts of Exposure	Number	Per Cent
Rape	27	1.0
Attempted rape	18	0.7
Intercourse with Female Under age 14	9	0.3
Intercourse with Female 14 and 15 years-old	8	0.3
Indecent Assault Female	311	12.0
Indecent Assault Male	81	3.1
Incest	10	0.4
Intercourse with Step-Daughter/Ward	1	0.1
Buggery	1	
Gross Indecency	41	1.6
Indecent Act	2051	78.9
Contributing to/JDA	41	1.6
TOTAL	2599	100.0

In four in five incidents (80.0 per cent) involving an act of exposure, no charges were laid either because the suspects' identities were unknown or for other reasons. For the one in five cases involving only an act of exposure in which charges were laid, in one in six (17.5 per cent) of these incidents were charges other than indecent act laid. In none of these cases did the police records report that an assault had occurred. The charges other than indecent act which were laid included: rape; indecent assault female; indecent assault male; gross indecency; and, contributing to (*Juvenile Delinquents Act*).

Of the incidents of group exposure to children, 14 charges were laid against seven males. These charges included: indecent assault female; indecent assault male; gross indecency; indecent act; and contributing to (*Juvenile Delinquents Act*).

These findings confirm that with respect to the listing of offences in police general occurrence records, **it cannot be assumed that the offence of indecent act is synonymous or interchangeable with acts of exposure.** While this was true in relation to the police classification of a majority of the incidents of this kind, the exceptions to this rule show that not all acts of exposure are identified by the police as indecent acts, and conversely, that charges of indecent act may include types of sexual behaviour other than acts of exposure.

Summary

1. Acts of exposure constitute the largest single category of all types of sexual offences committed against children and youths. In the National Population Survey, one in five females and one in 11 males reported acts of exposure, and of sexual offences known to the police, where girls were victims, about two in five were acts of exposure, and in incidents where boys were victims, about one in seven involved exposure by another male.

2. In each national survey, it was found that girls were predominantly the victims of acts of exposure.

3. On the basis of the findings of the National Population Survey, it was found that a majority of the victims of acts of exposure were children or youths when these kinds of acts had been committed against them for the first time.

4. There was a seasonal variation in the occurrence of acts of exposure with the fewest of these offences being reported during the winter. A majority of the acts in which children were victims occurred during daylight hours on weekdays.

5. Three in four acts of exposure to children occurred in open places such as parks or streets. Relatively few were made from a car. About one in 12 was committed in a private place.

6. In most acts of exposure, the penis was the part of the body most frequently displayed.

7. Most exposers were young males.

8. Over nine in 10 exposures to children were committed by strangers, with most of the remainder involving acquaintances or neighbours.

9. Virtually all acts of exposure to children were committed by persons who were alone. Most of the incidents having two or more offenders were committed by youths or young adult males.

10. The use of alcohol or drugs was seldom a factor involved in the commission of acts of exposure against children.

11. Following an act of exposure involving a child, over nine in 10 of these incidents were reported to the police within 24 hours.

12. Of acts of exposure to children reported to the police, almost all were listed as "founded" occurrences. The police knew the identity of two in five suspected offenders. Charges were laid in about one in five reported cases of acts of exposure.

13. The offence of indecent act is not synonymous with an act of exposure having been committed.

The Committee's findings clearly show that acts of exposure are relatively frequently committed and that a majority of victims were children and youths when these acts were first committed against them. Because these acts occur so often, and it is believed that victims are not physically injured, it could be

argued that while exposers commit socially unacceptable acts, they should be tolerated as an unavoidable nuisance about which little can be done.

The Committee rejects the premises of this perspective. All Canadians, not just children and youths, have the right to be protected from exposers. There is insufficient information available about the social and psychological consequences of these incidents upon victims, particularly those who are children. Likewise, there is insufficient information available about persons who are exposers, about how often and over what period of time they may commit these acts and about the efficacy of different services and sanctions used respectively to assist or deter them.

In considering different means whereby victims may be afforded protection from exposers, it is evident that there is an informational vacuum with respect to the occurrence of these offences in Canada. No public service system of classification exists which provides for an accurate and continuous documentation of acts of exposure. Police and crime statistics assemble information on indecent acts which are not synonymous with acts of exposure, and even the listing of these offences is usually grouped with other types of sexual crimes. Furthermore, these official statistics provide no information about victims. Relatively few cases of acts of exposure are medically assessed and the clinical definition of exhibitionism does not encompass the full range of acts committed.

The central finding from this analysis of acts of exposure is the sheer prevalence of this form of anti-social behaviour, both in absolute and in relative terms. Given the considerable extent to which acts of exposure of an intentionally insulting nature occur that are committed against children and youths, as documented in both the National Population Survey and the National Police Force Survey, the Committee recommends that such acts should be classified separately and distinctly by the criminal law.

In addition to strengthening the provisions in the *Criminal Code*, the Committee believes that several complementary measures are required if the occurrence of acts of exposure is to be contained or reduced. These measures include establishing the means of more accurately identifying these acts when they are known to have occurred and of educating children and youths about these risks.

With respect to providing more effective protection for children and youths from unwanted acts of exposure, the Committee recommends that:

1. **Section 169 of the *Criminal Code* be retained and that the *Criminal Code* be amended to provide that:**

   (i) **Every one who, for a sexual purpose, exposes his or her genitals to a young person is guilty of an offence punishable on summary conviction.**

(ii) **In this section, "young person" means a person who is or, in the absence of evidence to the contrary, appears to be under the age of 16 years.**

2. **As part of a national program of education and health promotion, children and youths be informed about these risks, and that this educational program be also undertaken as a preventive measure intended to educate and dissuade potential exposers from committing these acts.**

References

Chapter 8: Acts of Exposure

1. Mohr, J.W., R.E. Turner and M.B. Jerry, *Pedophilia and Exhibitionism*. Toronto: University of Toronto, 1964, p. 114.
2. *Ibid.*, p. 115.
3. Mohr, J.W., R.E. Turner and M.B. Jerry, *op. cit.*
4. Radzinowicz, L., *Sexual Offences. A Report of the Cambridge Department of Criminal Science.* English Studies in Criminal Science. Volume IX, London: MacMillan and Co., 1957.
5. Mohr, J.W. and M. Wildridge, *Sexual Behaviour and the Criminal Law, Part IV. Indecent Act - An Examination of the Nature of Offences Under S. 158 of the Criminal Code of Canada.* Toronto: Section of Social Pathology Research, Clarke Institute of Psychiatry, 1969 (mimeo) 30 pages.
6. Gebhard, P.H., J.H. Gagnon, W.B. Pomeroy and C.V. Christenson, *Sex Offenders: An Analysis of Types*. New York: Harper and Row, 1965.
7. Mohr, J.W. and M. Wildridge, *op. cit.*, pp. 17-18.
8. *Ibid.*, pp. 18-19.
9. *Ibid.*, p. 19.
10. Mohr, J.W., R.E. Turner and M.B. Jerry, *op. cit.*, p. 119.
11. *Ibid.*, p. 116.
12. *Ibid.*, pp. 124-125.
13. Radzinowicz, L. *op. cit.*, pp. 106-108.
14. Mohr, J.W., R.E. Turner and M.B. Jerry, *op. cit.*, pp. 159-62.
15. *Ibid.*, p. 118.
16. Gebhard, P.H. J.H. Gagnon, W.B. Pomeroy and C.V. Christenson, *op. cit.*, p. 365.
17. Mohr. J.W. and W. Wildridge, *op. cit.*, p. 24.

Chapter 9

Exposure Followed by Assault

The different definitions developed in relation to acts of exposure have expanded or contracted the elements that constitute this behaviour. Depending upon which perspective is adopted, conclusions have been reached about whether exposers are harmless or dangerous and about how they might be more effectively managed. Although research evidence suggests that in some instances exposures are a prelude to assaults, it has generally been concluded that exhibitionists seek to achieve final sexual gratification by their acts of self-display.

In undertaking its review of sexual offences against children, the Committee found in its statistical analysis that there were incidents in which both an act of exposure and an assault were reported to have occurred. In order to document these incidents more completely, a case-by-case review was undertaken of all incidents in which exposures were reported in the National Police Force Survey and the National Population Survey.

The results presented in this chapter do not support the widely held belief that all exhibitionists are harmless. Some of them are dangerous. The findings also suggest that when a child is exposed to, there may be neither warning signals nor behavioural clues to indicate whether only an act of exposure is likely to be committed or whether the act is a prelude to some form of sexual assault.

Assessment of No Danger

A widely adopted clinical definition of exhibitionism specifies that these acts are committed only by males against females and that no form of physical contact occurs. Since this definition precludes any form of touching, the conclusion reached about the character of exhibitionists is hardly surprising, namely, that they are invariably harmless and inadequate persons more to be pitied than to be feared.

Situations in which children may be sexually touched or fondled by an adult are subsumed under the clinical concept of pedophilia. The Greek etymological roots of this term classify these persons as "lovers of children"; the word

has come to be used to denote persons who are sexually attracted to children, but who are believed to do little or no harm to them. In clinical research, the term has been used to refer to a number of different types of sexual acts occurring between adults and children. Under the rubric of pedophilic behaviour, sexual acts have been listed ranging from touching and fondling to assaulting and injuring victims. Depending upon the respective sexes of the offender and the child, a distinction is commonly made between homosexual and heterosexual pedophilia.

Because the concept of pedophilia has been used to encompass a wide range of sexual acts which are often not clearly specified, the term is not used in this Report. It is also unclear in what respects pedophiles are said to love children more than other persons do, particularly when this behaviour involves committing unwanted sexual acts against young victims.

The view that exhibitionists do not touch, or if they do, they do not harm children, has been widely stated. On the basis of this assumption, it has been asserted that such persons may require psychiatric assessment and that their preventive detention is not warranted. As these views enjoy wide credence, a number of statements adopting this position are considered.

In a comprehensive review of the assessment and treatment of child molesters, V.L. Quinsey has noted that:

> "Exhibitionists have been found, in general, not to pose a danger to children, although no extensive study of men who expose themselves exclusively to children has been reported."[1]

In a report on sexual assaults that was written as an information handbook for Canadians, the view was expressed that pedophiles and persons who committed incest with children, because of their affection for them, were unlikely to injure their victims physically and that their victims often reciprocated this affection towards them.

> "Sexual acts which are not considered acceptable in our society, such as incest (intercourse between persons who are closely related) and pedophilia (sexual touching and fondling of prepubertal children by mature adults) usually do not contain the element of hostility. Frequently, the persons involved feel real affection towards each other and the person whose sexual rights are misused may not perceive him or herself as abused or hurt in any significant way."[2]

In the 1953 report on the *Sexual Behaviour in the Human Female*, the Institute for Sex Research obtained information from 4,441 females. The study gave findings on unwanted sexual acts, including acts of exposure. The report concluded:

> "It is difficult, in any given instance, to know the intent of an exhibiting male, but our histories from males who have been involved in such exhibitions and who, in a number of instances, had been prosecuted and given penal sentences for such exhibitions, include many males who would never have

attempted any physical contact with a child. The data, therefore, do not warrant the assumption that any high percentage of these males would have proceeded to specifically sexual contacts. It is even more certain that it would have been an exceedingly small proportion of exhibitionists who would have done any physical damage to the child. In all of the penal record, there are exceedingly few cases of reports of rapists who start out as exhibitionists."[3]

The 1956-59 Toronto Forensic Clinic Study, in which the experience of 54 exhibitionists was reviewed, concluded that while acts of exposure were frequently committed, none of the victims was physically harmed, although some might experience certain psychological after-effects.

"Exhibitionism is important because of the frequency of its occurrence, but is of minor concern in regard to the nature of the act. The consequences, although shocking to many victims, are in general not dangerous to them. This is well recognized by the law . . . "[4]

"The effects on the victim will depend on her own psychological health, her attitude towards sexual matters, her knowledge of the deviation, and especially her realization that no further contact is desired and that there is no impending danger of rape. The fear of an attack is likely to produce a stronger effect than the act itself. Since exhibitionism is not an uncommon deviation and since many women are likely to encounter an exhibitionist sometime in their lives, a general knowledge of the deviation should reduce the possible negative effect of fright."[5]

In a 1964 study of 756 sex offenders on probation in seven provinces across Canada, 153 cases involved persons charged with having committed indecent acts. Of these cases, 139 of the offenders had been put on probation, seven had received other dispositions (fines, suspended sentences, remanded for treatment) and seven were in jail. Based on findings about persons for whom there was limited information about the nature of the indecent acts they had actually committed, the 1964 study of sex offenders concluded:

"Psychiatric services were most frequently used in relation to the Exhibitionistic Offences, 106 cases of a total of 139, or 76.3% . . . it is surprising to find that the highest use of psychiatric services is made in Exhibitionistic Offence cases in which the degree of personal harm to the victim is quite possibly the least."[6]

"Considering the nature of the offence, where in almost all cases there is some distance between the accused and the victim, where the victim is offended, insulted, frightened or surprised but the actual physical contact is almost always absent and the degree of personal harm relatively less than most other sexual offences, it is difficult to see the merit in stress being placed on psychiatric services for this type of offender. That this emphasis is prevalent in most of the provinces suggests a prevailing judicial attitude as to the need of psychiatric services in cases of this kind."[7]

In its 1978 report on *Sexual Offences*, the *Law Reform Commission of Canada* concluded that the application of the offence of indecent act incorporated the phenomenon of exhibitionism was a type of deviant sexual behaviour more properly dealt with by psychiatric treatment than by criminal justice.

"The general formulation of section 169, which prohibits the commission of indecent acts, is applied in practice to the phenomenon of exhibitionism.

> Properly speaking, compulsive behaviour of this kind falls within the province of psychiatry. Nonetheless, the text of the present *Code* imposes criminal sanctions because it is perpetrated in a public place or with intent to insult or offend. Admittedly in the circumstances treatment of the offender would seem to call for psychology or psychiatry rather than criminal justice. All the same, the public unquestionably has a right to be protected against acts outraging its sense of public decency."[8]

The conclusion that persons exposing themselves to children are not dangerous may be valid, but findings are not given in these reports that provide reasonable documentation to support these statements. Furthermore, none of the main studies on exhibitionism focussed directly or in detail on the experience of children.

The conclusion that exhibitionists are harmless rests in part on the conceptual tautology created by the definitions used, and in part, on the sources of information drawn upon in the research studies. As has been noted, the clinical definition of exhibitionism precludes acts of touching, and hence, incidents involving contact are excluded from consideration. As well, much of the research on exhibitionists has been derived either from records of police charges or persons who have been referred for psychiatric assessment. Such information has not been based on a direct review of the actual types of sexual acts committed. To the extent that this has been the case, incidents in which an investigation was made but where charges were not laid, and incidents in which charges were laid with respect to behaviours other than exposures, would have been excluded from consideration.

Assessment of Risk

The findings of a limited number of research reports suggest that a small proportion of exhibitionists respectively either touch or harm victims. All of these studies are based on the records of persons who have been charged, convicted or psychiatrically assessed. In some instances, the results listed do not accord with the principal conclusions given elsewhere in the reports, namely, that these offenders pose no danger to their victims.

- *1956-59 Toronto Forensic Clinic Study.* In this study of 54 exhibitionists, 20 per cent committed another sexual offence within three years. "Exhibitionists exposing to children are more likely to become repeaters than those who expose to adults . . . "[9]
- *1957 British Study of Sexual Offences.* "There was, however, a small group of offenders who exposed themselves to females, usually children, as a preliminary to some form of indecency . . . a small proportion of offenders who were caught *in flagrante delicto*, but might well have gone on to commit a more serious offence if they had not been intercepted."[10]
- *1965 U.S. Study of Sex Offenders.* Of all convicted sex offenders, exhibitionists had the highest proportion of previous convictions for sexual offences. "No other group approaches them in the *per capita* number of

sex-offence convictions."[11] "Almost a fifth involved the use of force on unwilling females."[12]

- *1973 British Study of Exhibitionists.* Eight of 30 males who exposed themselves to females had a history of sexual contact with children; three of these offenders had molested prepubertal children.[13]
- *1975 Clarke Institute of Psychiatry Study.* In a review of 37 heterosexual pedophiles treated at the Institute between 1967-74, 17 per cent either had committed acts of exposure or were classified as being subject to these impulses.[14]

  Of 23 cases of rapists who were seen at the Institute during this period, "25% admitted to indecent telephone calls, exhibitionism or some form of homosexuality."[15]
- *1979 British Midland Centre for Forensic Psychiatry Study.* Of 100 cases of indecent exposure, 45 per cent had a previous record of sexual offences, including indecent assault and more serious sexual offences. "It has often been said that exposers rarely progress to more serious offences (Cambridge Study, 1957; Mohr, Turner and Jerry, 1964), but this study, which indicated that 7 per cent progressed to more serious offences, demonstrates that there are exceptions to this rule."[16]

Although each of these reports dealt with a small number of cases, the proportion of incidents involving both exposure and assaults ranged between about a fifth and a quarter of all persons identified as exhibitionists. The findings suggest that there may be a progression from less serious to more serious sexual offences committed by persons who previously were known to have exposed themselves. The findings of these studies, however, are fragmentary and incomplete with respect to their documentation of the experience of children who were victims of both exposures and sexual assaults.

Case Studies

Of the national surveys undertaken by the Committee, more complete information on acts of exposure to children was obtained in the National Population Survey and the National Police Force Survey. As noted in Chapter 6, many victims of acts of exposure do not report these incidents. When they do, the police are the public service most often turned to for assistance. For both national surveys, all research protocols were individually reviewed with respect to incidents involving both exposures and assaults.

National Population Survey

Of the persons in the National Population Survey who reported that they had been exposed to when they were age 15 or younger, 4.3 per cent of the males and 7.8 per cent of the females said that they had been exposed to and sexually assaulted. Their written accounts indicate the nature of these acts and the reasons why so few of them reported the incidents.

- *19 year-old sales clerk.* When she was 12, a 14 year-old first cousin exposed himself to her. He also threatened to have intercourse with her and touched her breasts several times. Six months later, she told her mother "I felt that because it was a family member, I shouldn't say anything. It should be made clear to everyone that family member or not, it should be reported to someone."

- *43 year-old mother of three children.* Between when she was 11 and 12 years-old, she was initially exposed to. She was subsequently threatened with having intercourse and then raped by "a man who worked on our family farm." She told no one about this. This woman recommended: "Better sex education at school and by parents; and better supervision by adults of children's activities."

- *20 year-old college student.* When she was 15, a 16 year-old boyfriend exposed himself. On another occasion, he threatened to have intercourse with her. Subsequently, he attempted to rape her. "He tried to force to make love with me. He made fun of me because I'd be old and a virgin." She told her sister about what happened. "I could have been helped better if I would have been more informed about sex, its outcome (physically and emotionally). Perhaps if they taught it in school about Grade 7."

- *23 year-old hustler.* When he was 10, a 26 year-old stranger exposed to him several times. The stranger fondled his penis, fellated him and attempted to have anal intercourse. No one was told. "Having to suck a man really changed my life. Maybe, I would be straight now."

- *36 year-old mother of two children.* When she was 14, her 17 year-old brother "exposed himself to me." He then tried to fondle her crotch and breasts. "I was alone with him in the house and scared." No one else in the family was told. "Open discussions with my parents would have helped, however, then it was so hush-hush a topic."

- *32 year-old police officer.* Of an incident in which she had been exposed to at age 12 by a 23 year-old cowboy, she wrote that he then "tried ripping off my clothes." She did not report the incident. "My mother did not want the publicity. As long as there are public instead of *in camera* trials for rape, nothing can really help. The woman is on trial as much as the rapist."

- *23 year-old librarian.* When she was five, she was exposed to several times, had her crotch fondled, and then was subsequently raped by her uncle. None of the incidents was reported. She wrote: "Better communication between parents and children would have prevented such occurrences."

- *57 year-old salesman.* When he was 15, a 23 year-old family friend exposed himself. The adult then fondled the boy's penis and tried to masturbate him. "We slept together at a cottage one summer and he tried to masturbate me. He did not complete the act after my refusal." The incident was not reported. "I was surprised at his action and told him so in private."

- *56 year-old woman.* When she was 12, she was exposed to by someone whom she knew by sight. The male also fondled her breasts and buttocks. "People came to my aid in the school grounds where it occurred." The incident was reported to the police and family doctor, but "I was too afraid to press charges."

- *40 year-old mother of three children.* She was exposed to by her stepfather when she was 10. He then fondled her crotch and threatened to have intercourse with her. She told her mother, but no one else. "As a child, I was afraid of breaking up an already unstable home. My concern was for my mother. I felt I would have liked to speak to a teacher, but I was unable."
- *25 year-old man.* He was exposed to when he was 12. He was later masturbated by the same 18 year-old male. He wrote: "Wasn't important; part of growing up. My incident was just part of growth."
- *27 year-old mother of four children.* When she was eight, she was exposed to by a neighbour. He then attempted to rape her. "An older man, 25-30 years-old, tried to put his penis in my vagina. He asked me to go for a walk with him. I ran when I realized what he wanted to do." She told no one about the incident. "I was too young to realize what he wanted. I should have been taught something about sex in school so I would know enough not to have gone with this person."
- *29 year-old waitress.* When she was between six and 10 years-old, she was repeatedly exposed to, threatened and touched on her breasts by her father. He also tried to rape her. "My father tried with me. I was marked for a long time about this — it will follow me emotionally through my life." The child finally told a social worker who spoke to her father and the acts were stopped.
- *68 year-old retired high school principal.* When she was 10, she was exposed to several times and had her crotch fondled by a labourer who worked for her parents. "I was too young and too afraid to do anything about it."

The average age of these persons when the incidents had happened to them as children was 10.9 years. Their age range was between five and 15 years. In only two cases were the acts committed by strangers. In about a third, a family member was involved; the remainder of the exposures followed by an assault were committed by acquaintances. In two-thirds of these personal accounts, the child told no one. Many of them felt they did not know enough about sex to realize the significance of the acts, some were afraid and others were too ashamed to tell.

In about a fifth of these incidents a family member was told, but no further action was taken. In only two cases were members of the helping services contacted, and in neither instance were charges laid. In contrast with the findings on acts of exposure in which a majority of the suspected offenders were strangers, incidents in which exposure was followed by an assault were mostly committed by persons known to the child. This close association between victims and exposers-assailants partially explains why so few incidents of this kind are reported to the authorities. It may also account for the conclusions reached by some observers that such incidents do not occur. The victims of these offences are in a position of double jeopardy. On the one hand, they are too young to know how to protect themselves or are afraid to seek help, and on the other hand, most of the persons who exposed themselves and then tried to assault the children were persons whom they knew.

The assaults committed following an act of exposure were, with few exceptions, serious offences. In only about a fifth of these incidents did an offender only touch or fondle a child. In incidents in which boys were involved, they were masturbated or anal penetration by a penis was attempted. Girls who were victims were most frequently threatened with rape, one girl was raped, and another had her clothes torn from her body.

In none of the incidents described in the personal accounts did a child realize that an exposure was likely to be followed by a sexual assault. At face value, only a small number of children appear to be at risk of offences involving exposure followed by an assault. In the National Population Survey, one in 23 males and one in 13 females reported that they had been victims of these offences when they had been children. However, since the National Population Survey was a random and representative sample of the Canadian population, if these rates are prorated to the total population, then it may be the case that a sizeable number of Canadian children are victims of offences of this kind.

National Police Force Survey

In the National Police Force Survey, a total of 1,624 incidents of exposure to children who were age 15 years or younger was reported and there were 63 cases in which exposure was followed by an assault. The proportion of the latter to the former was 3.8 per cent. Since the number of cases of this kind reported to all police forces across Canada is unknown, no estimate can be made of how many such cases routinely come to the attention of the police. Based on the findings of the National Population Survey, in which only 7.1 per cent of cases of this kind were reported to the police, it could be expected that since the National Police Force Survey included a review of the records of many of the largest cities in Canada, only, at most, between 200 and 300 such cases would be investigated annually across the country.

The police general occurrence records were reviewed individually in order to provide additional documentation of incidents in which exposures were followed by an assault. A total of 485 such incidents were found, but in a majority of these cases there was insufficient information to determine either the sequence of the sexual acts committed or to assess whether an exposure had preceded an assault and was not an integral part of the assault. All such cases were set aside and, for this reason, the number of incidents which were investigated by the police in which two separate acts were committed is likely to be an underestimate of the actual number which actually came to their attention.

The case studies based on reports of investigations by the police show that a higher proportion of incidents of this kind was committed by strangers than the proportion reported in the National Population Survey. This finding suggests that when such offences are committed by strangers, they are more likely to be reported to the police. The case studies from the police records also show that relatively few of these offences were reported to have been committed by family members or acquaintances of the child.

- *12 year-old boy* was exposed to by a 22 year-old male neighbour who also masturbated himself. He then fondled the boy's penis and showed him pornography. Cautioned by police and referred for psychiatric assessment.
- *Two sisters, ages five and eight* were exposed to by a 56 year-old male boarder. He subsequently fondled their crotches. Charge of indecent assault female was laid.
- *14 year-old girl* was walking along railway tracks when a 21 year-old male exposed himself to her and then fondled her breasts and buttocks. Charged with committing an indecent act and an indecent assault female.
- *Six year-old boy* on his way to school said "hello" to a middle-aged male who was in an alley. The man took the boy to a garage, exposed himself, and then asked the boy to fondle his penis. The boy was given a dime. Identity of the suspect unknown.
- *Two brothers, ages eight and nine*, while visiting a hospital were exposed to by a 33 year-old male who was sitting in a wheel chair. One of the boys was persuaded to masturbate the patient. No charges were laid.
- *Eight year-old girl*, while playing in a government subsidized playground, was approached by a male with his penis exposed. The man asked the girl to play with him and forced her to fondle his penis. Identity of suspect unknown.
- *Seven year-old girl* was exposed to in a school yard by a young man. He offered her a dollar for a kiss. He kissed her and fled. Identity of suspect unknown.
- *12 year-old girl* was playing in a park. She was helped onto a slide by a 25 year-old man who exposed his penis and then caressed her buttocks. Charge of indecent act was laid.
- *Two 15 year-old girls* walking on a street were followed by a man who exposed his penis and then tried to proposition them. He grabbed one of the girl's breasts. They resisted using a stick. Charges of indecent act and indecent assault female were laid.
- *10 year-old girl* was playing with friends when a 55 year-old male neighbour called them over to his garage. He was exposing himself. He pulled the girl to him and fondled her breasts, buttocks and genital area. Suspect was cautioned. Charges not laid due to child's age and lack of evidence.
- *15 year-old girl* knew by sight a 56 year-old man from walking her dog in the neighbourhood. The previous summer, he had repeatedly exposed himself and threatened her unless she fellated him. During the incident, after exposing himself, he threatened and fondled her. Charges were laid of indecent act and indecent assault female.
- *Three year-old girl*, while having her diapers changed by her mother said that she had seen a man's "dicky bird" when she had been in the stairwell of the apartment building. The man later took the girl to his apartment, where he had the child touch his penis. Suspect unknown.
- *Three children, two girls and a boy between four and eight years-old* were playing at the side of a road when a man drove up in a car, exposed himself and offered each of the children a dollar to touch him. They did. Identity of suspect unknown.

- *Eight year-old girl* was exposed to in her home by a 33 year-old man who was a friend of her father. He subsequently had thigh intercourse with her. Charges of indecent act, indecent assault female and gross indecency were laid.
- *Eight year-old girl* was approached in church by a young man. He offered her $2 to go outside with him. He exposed himself to her and then had her touch his penis. Identity of suspect unknown.
- *Five year-old girl and a friend* on their way home from school were taken by an adolescent boy to a garage. The boy exposed himself. He pressed his body to one of the girls, simulated intercourse with her and lay on top of the other girl, while fondling her genitals. Suspect unknown. Credibility of the victims questioned in police general occurrence report.
- *Eight year-old girl and a friend* were called over to a car in which a man exposed himself, grabbed one of the children by the shirt and masturbated himself with his other hand. Identity of suspect unknown.
- *10 year-old girl* was approached by a male jogger who was exposing his penis. He asked her to touch it. She did and he ejaculated. Identity of suspect unknown.
- *12 year-old boy*, while walking along railway tracks, was approached by a man and offered $10 to show his penis. He refused. The man then undressed and forced the boy onto his hands and knees. Identity of suspect unknown.
- *Six year-old boy*, while in a playground, was approached by three youths, one of whom had his penis exposed. The boy was forced to take the penis of one of the youths in his mouth. Identity of suspects unknown.
- *Four year-old girl* was taken several times by a 57 year-old neighbour into a garage where he exposed himself, had her touch his penis and fondled her crotch. Age of child, lack of evidence and lack of corroboration were cited as reasons why charges were not laid.

The suspect was unknown in slightly less than half (47.6 per cent) of the incidents of exposure followed by an assault of a child investigated by the police. Charges were laid in 45.5 per cent of cases where suspects were known. In about two in five of the cases where the police knew the identity of the suspected offender, charges were not laid due to the mental or physical condition of the male offenders. In the remainder, charges not laid were due to lack of evidence, to the child's age and to the child being disbelieved. In virtually all cases of this kind (95.2 per cent), the charges were listed as "founded" by the police, an indication that the police believed the great majority of the accounts related to them by the children who were victims of acts of exposure followed by an assault.

Summary

The Committee's findings on acts of exposure followed by a sexual assault do not support the view held in some quarters that all persons who expose

themselves to children are harmless and should be considered more of a nuisance than a threat to victims. The findings in Chapter 8, *Acts of Exposure*, indicate that a large number of these persons only expose themselves and do not touch or assault children. However, the Committee's research findings also show that in a small proportion of instances, acts of exposure are followed by a sexual assault against a child or youth, and that if this ratio is prorated to the Canadian population, then a sizeable number of Canadian children are likely to be at risk of being victims of these types of offences.

In the absence of more complete findings and evidence to the contrary, the conclusion cannot be accepted that persons who commit such acts are harmless and do not commit more serious crimes against victims. In this regard, the Committee does not accept the conclusion of the major previous Canadian study on exhibitionism, namely, that:

> "Since exhibitionism is not a progressively dangerous sexual offence, legislation involving preventive detention cannot be justified . . . Because sexual offences evoke an emotional reaction, not only in the general public, but also those dealing with the offender, it is especially important that judicial and correctional procedures be based on what the problem is, and not on what it is feared to be."[17]

The Committee considers that there is insufficient evidence to conclude that "exhibitionism is not a progressively dangerous sexual offence" or that "legislation involving preventive detention cannot be justified". Nor can it be assumed, as the *Law Reform Commission of Canada* has concluded, that "properly speaking, compulsive behaviour of this kind falls within the province of psychiatry".[18]

On this issue, the 1956-59 Toronto Forensic Clinic Study stated that:

> "The deviation is not a symptom of mental illness or mental defectiveness, nor is it necessarily indicative of general immoral behaviour."[19]

> "Hospitalization is seldom required since neither the mental state nor the element of danger justifies certification. Serious mental disorder or mental retardation are found in only about five per cent of the cases. Most of the additional psychiatric diagnoses that are associated with exhibitionism fall into the category of character disorder, such as immature or inadequate personality."[20]

> "After some 12 years of assessing and treating exhibitionists in a clinical outpatient setting, our experience shows that the kind of assistance required by a large majority of exhibitionists may be quite adequately provided by probation officers. Psychiatric services may be more appropriately and widely used for consultation in difficult cases rather than carrying the load for all cases. There are not proven cures for exhibitionism and, as yet, no evidence that intensive psychiatric care yields appreciably better results than case management procedures which are within the capabilities of trained probation officers."[21]

If, as the findings of the Committee and a number of other studies indicate, some persons who expose themselves to children are also likely to assault them, and if, based on psychiatric assessment, it appears that most of these

offenders are not mentally ill, then the Committee believes that legal sanctions must be retained with respect to persons who commit these acts. The Committee believes that there is a need to establish a means for the continuing surveillance by enforcement and correctional authorities of persons who commit these acts against children, and that a comprehensive assessment is warranted of the efficacy of the management of offenders put on probation, fined, given suspended sentences, remanded for treatment, or jailed. No such comprehensive and detailed evaluation is now available.

In order to assemble more complete information on acts of exposure and acts of exposure followed by a sexual assault, the Committee recommends that the Office of the Commissioner in co-operation with the Canadian Association of Chiefs of Police mount a national prospective fact-finding study in which:

1. **Persons reported to have exposed themselves to children and youths would be identified.**
2. **A monitoring of any subsequently reported offences would be established.**
3. **An evaluation be undertaken of the outcomes and effectiveness of different management procedures and sentencing practices in relation to reducing recidivism.**
4. **The classification of these acts in Uniform Crime Report Statistics be revised in order to permit the accurate identification of these acts on an ongoing basis.**

References

Chapter 9: Exposure Followed by Assault

[1] Quinsey, V.L., The Assessment and Treatment of Child Molesters: A Review. *Canadian Psychological Review*, 18: 1977, p. 208.

[2] Bray, R.M., *Sexual Assault in Canada*, Toronto: University of Toronto Guidance Centre, 1980, p. 37.

[3] Kinsey, A.C., W.B. Pomeroy, C.E. Martin, and P.H. Gebhard, *Sexual Behaviour in the Human Female*, Philadelphia: W.B. Saunders Co., 1953, p. 119.

[4] Mohr, J.W., R.E. Turner and M.B. Jerry, *Pedophilia and Exhibitionism*. Toronto: University of Toronto Press, 1964, p. 169.

[5] *Ibid.*, p. 121.

[6] Gigeroff, A.K., *Sex Offenders on Probation: A Survey of Seven Provinces*. (Distribution of Offences with an Analysis of the Use of Psychiatric Services). Toronto: Clarke Institute of Psychiatry, 1965, p. 62.

[7] *Ibid.*, p. 69.

[8] Canada. Law Reform Commission of Canada. *Sexual Offences*. No. 10, Ottawa: Department of Supply and Services, 1978, p. 31.

[9] Mohr, J.W., R.E. Turner and M.B. Jerry, *op. cit.*, pp. 155-156.

[10] Radzinowicz, L., *Sexual Offences. A Report of the Cambridge Department of Criminal Science*. Volume IX. London: MacMillan and Co., 1957, pp. 108 and 112.

[11] Gebhard, P.H., J.H. Gagnon, W.B. Pomeroy and C.V. Christenson, *Sex Offenders: An Analysis of Types*. New York: Harper and Row, 1965, p. 393.

[12] *Ibid.*, p. 393.

[13] Rooth, G., Exhibitionism, sexual violence and pedophilia, *British Journal of Psychiatry*, 122: 705-710, 1973.

[14] Paitich, D., M. Cannell, L. Hermanstyne and B. Orchard, *Heterosexual Pedophilia. Toronto: Clarke Institute of Psychiatry, Sexual Offences under the Criminal Code of Canada Research Project*, 1975.

[15] Coulthard, R., R. Aldridge, D. Paitich, A. McDonald, G. Goldstein and J. Leibl, *Rape. Toronto: Clarke Institute of Psychiatry, Sexual Offences Under the Criminal Code of Canada Research Project*, 1975.

[16] Blueglass, R., Indecent Exposure in the West Midlands, in D.J. West (editor), *Sex Offenders in the Criminal Justice System*, Cambridge: Cropwood Conference Series No. 12, 1980, p. 179.

[17] Mohr, J.W., R.E. Turner and M.B. Jerry, *op. cit.*, pp. 169-170.

[18] Canada. Law Reform Commission of Canada, *op. cit.*, p. 31.

[19] Mohr, R.W., R.E. Turner and M.B. Jerry, *op. cit.*, p. 116.

[20] Mohr, J.W. and R.E. Turner, Sexual Deviation: Part III: Exhibitionism, *Applied Therapeutics*, 9: 263-265, 1967.

[21] Gigeroff, A.K., J.W. Mohr and R.E. Turner, Sex Offenders on Probation: The Exhibitionist, *Federal Probation*, September 1968.

Chapter 10

Children Who Were Killed

The Homicide Statistics Program established by the Justice Statistics Division of Statistics Canada in 1961 assembles information on all cases of murder, manslaughter and infanticide that are reported by the police, the courts and correctional services across Canada. This national register is unique among the various sources of criminal official statistics because of the breadth of the information that it assembles, its continuity spanning a period of over two decades, and the fact that, unlike other sources, it provides information about the victims of the homicides as well as on the persons who are suspected, charged or convicted of these deaths. Collated by means of a standard reporting protocol, the findings of the national register of homicides reflect changes in reporting procedures, the introduction of new legislation bearing on these crimes, and since 1974, the separation of homicides into different categories listing separately murder, manslaughter and infanticide. The index does not draw upon the findings listed in death certificates; a different system of classification is followed in the reporting of mortality statistics for the nation.

During the initial review of police records that was undertaken in relation to the National Police Force Survey, it was found that homicide cases were kept separately and that no distinction was made in these sources between homicides that were caused by sexual abuse and by other means. In smaller police forces whose recording systems function on a manual basis, obtaining information on homicides involving children entails the drawing and checking of all homicide occurrence reports. Depending on the size of the police force and whether a separate unit handled homicides, the nature of all types of sexual assaults cannot be readily documented without reviewing the cases with the police who undertook these investigations. It is for these reasons that information was not collected on sexually motivated child homicides during the course of the National Police Force Survey and that, in this regard, the national homicide register was drawn upon as the principal source of information.

At the request of the Committee, the Justice Statistics Division of Statistics Canada provided a special tabulation of all homicides of children between 1961-81 that were listed as being sexually motivated or that had involved sexual assaults. Sexual assault murders were defined as: "murders which were

preceded or accompanied by rape or indecent assault, or were sexually motivated." Sex-motivated murders include deaths in which the "suspects did not sexually attack the victim, but had previously made sexual advances (degree or intensity of advances are unknown) and after they were rejected, murdered the victim".[1] Lovers' quarrels or love triangles are listed separately from sexual assaults and sexually motivated murders; they involve cases having "personal relationships. . . (such as). . . fiance/fiancee, boyfriend/girlfriend, mistress/lover and homosexual relationship."[2]

Incidence of Child Homicides

There are no historical baseline studies that can be drawn upon as a benchmark to answer the question: "Are more children and youths sexually assaulted now than in the past?" There have been no direct studies of Canadians in which these questions have been asked that can serve as a basis for such a comparison. Official criminal statistics do not report information about the victims of criminal offences.

The national register of homicides for the period between 1961 to the present is the only source of criminal statistics known to the Committee that assembles information for Canada on a uniform basis about the victims of sexual offences. Among the interpretations of the reporting of criminal statistics, the three most prominent approaches have been: a positivistic analysis; a critical perspective; and an institutional supply model. Among these, there is agreement only on the recognition that official statistics do not reflect accurately the true extent to which offences are committed.

The *positivistic* approach, while acknowledging deficiencies in official statistics, assumes that "nonetheless, they represent an indicator of the crime rate" and thus that they may be drawn upon "to analyze the crime that is known to the justice system."[3]

Contrasting with this approach are the assumptions of a *critical perspective* that contends that apparent increases in reported crimes are a statistical mirage whose proportions are swollen by the inclusion of a sizeable number of minor offences. One historical review of crime rates for Canada for the period 1950-66 that was subsequently updated to 1977 concluded that "neither total indictable victims nor charges were found to have increased" and that there were "real decreases in a number of important offence categories."[4]

The critical perspective challenges the validity of official crime statistics on the grounds that these rates are often inflated in order to justify the need for more enforcement services and the meting out of harsher sentences. It is alleged, for instance, that the police are "notorious for exaggerating increases" in the reporting of crime, that Statistics Canada "never understates a gloomy crime statistic" and that "Canadian crime legislation very much reflects the

particular interests of the holders of economic and political power."[5] By fostering a sense of public alarm, public enforcement services are said to justify their existence and the need for increased public support as well as showing that "recourse to repressive measures can be better defended."[6]

The *institutional supply model* of interpretation of changes occurring in crime rates assumes that these are indicators of the dominant characteristics of any nation and its different regions. From this perspective, the reporting of crime is contingent upon a country's wealth, the level of education of its people, the adequacy of its public services, and the size of its police forces and the population of its large towns or cities. Where these occur in conjunction, and as they rise, there will be higher rates of reported crimes. An interpretation based on this perspective would conclude that reported crime rates are higher in those regions of Canada where the inhabitants are better educated, have higher incomes, more live in urban areas and where public services are more efficient and police-to-population ratios are lower.[7]

What is absent in the discussion of the interpretation of crime rates for Canada, and whether or not they have been rising, is a firm body of information upon which to test these conjectures. It may be the case that the salient points of each perspective are not contradictory, but are complementary in explaining the occurrence of crime.

Regardless of how the trends involving sexual assault homicides having children as their victims are interpreted, there is no doubt that the reported incidence of these killings has risen in both real and proportional terms between 1961 and 1980. During this period, there was an average of 7.8 such deaths each year of children and youths who were 20 years-old or younger. In the following listing, these deaths are grouped into five year periods. The average number of deaths annually for each period is listed as well as the rate of the deaths per one million children under 16 years of age. The number of the children under age 16 in Canada decreased from 6,909,900 in 1965 to 6,001,000 in 1980.

Years	Total of Child Sexual Assault Homicides[1]	Annual Average Number	Rate per One Million Children Under Age 16
1961–65	20	4.0	2.9
1966–70	30	6.0	4.6
1971–75	62	12.4	9.6
1976-80	43	8.6	7.2

[1] Year of one child homicide was not listed in the statistical tabulation provided to the Committee.

During this period of two decades, there was a doubling in the occurrence of these deaths when they are considered by themselves and are not adjusted for the changing age composition of the Canadian population. During the peak five year period between 1971-75, this number rose to 13 deaths for each of 1971 and 1974 and 22 deaths during 1973. In terms of their incidence based on

rates per one million children, there was an increase in the reported sexual assault child homicides from 2.9 to 7.2 per million children between 1961-80, or an overall increase of 148 per cent. The rate of these deaths peaked at 9.6 per one million children between 1971-75.

Age and Sex of Children

For the period 1961-80, 156 sexual assaults and sexually motivated homicides involving children and youths (under age 21) were reported to the national register. The sequence of attrition occurring between when the crimes were reported to the police and their disposition by the courts parallels the trends in these respects for all types of crime. In about half of the cases (52.3 per cent), the offenders of the sexual assault child homicides were imprisoned for these offences. The identity of the assailant was unknown in about a quarter (23.1 per cent) of the deaths. Of the homicide suspects whose identity was known, several subsequently committed suicide, a number were insane, and in about a seventh of the deaths, the suspects were acquitted at court hearings of the charges laid against them.

A majority (84.0 per cent) of the young victims were females. Two of the killings were of infants under two years-old. During this period of two decades, sexually motivated killings of children involved: 11 who were between 2-6 years, 29 who were between 7-11 years, 21 who were between 12-13 years, and 25 who were between 14-15 years.

Depending upon their ages, the risks of being the victims of these crimes were different for boys and girls. Among the 22 boys who were killed in which sexual assaults had occurred, half were between 7-11 years with the remainder being evenly distributed between the younger and the older age categories. In contrast, the number of these types of killings rose with age among the 67 girls who were under age 16. One female child was under the age of two years, 10 were between 2-6 years, 18 between 7-11 years; 17 between 12-13 years and 21 were 14-15 years.

The most frequent ways that the children were killed were: strangling (34.6 per cent); beating (20.5 per cent); and suffocating (9.0 per cent). Alcohol and/or drugs had been used by assailants before or during one in four of these deaths (23.1 per cent). Weapons were used in about a third (29.2 per cent) of the deaths with stabbing by knives occurring twice as often as deaths caused by firearms (19.6 per cent versus 9.6 per cent).

When the experience of children and youths is considered separately from the homicides involving adult victims, it is apparent that they are not only the victims of serious and violent crimes, but they also constitute a high risk group among sexual assault homicides.

The special tabulation of sexually related child homicides prepared for the Committee shows that when these types of crimes are committed, children and

youths are an especially vulnerable group. For the 14 years between 1961-1974, children under the age of 16 years constituted about a ninth (11.7 per cent) of the 4,658 homicides reported by the police that were listed in the national register of homicides. Of this total, **there were 104 sexual assault homicides. Children under the age of 16 were the victims of two in five (43.3 per cent) of these deaths.** In contrast, children under 16 years were the victims of only 10.9 per cent of all other types of homicides.

Type of Homicide	All Homicides 1961-74	Children under 16 Years	
		Number	Per Cent
Sexual assault homicides	104	45	43.3
All other homicides	4,554	498	10.9
Total	4,658	543	11.7

In a number of studies on crime rates for Canada, the very young and the elderly have been omitted in the calculation of these statistics. This omission was based on the peculiar assumption that since persons in these groups seldom commit crimes of violence against the person, they should be excluded in the calculation of rates relating to the victims of these crimes. In one analysis, for instance, it was noted that certain crime statistics are based on a population denominator of persons who are seven years or older since this is "the minimum age of mitigated responsibility for minors."[8] In an international comparative review of crime rates which included the Canadian experience, "all figures were deflated by the population aged 10-40, the population most at risk for criminal behaviour and sanctioning."[9]

The exclusion of certain age groups in the population in studies deriving estimates of the prevalence of crime serves, by definition, to inflate the numerator or the apparent number of offences that are reported by comparing them with a smaller number of persons who may be at risk as the victims of these offences. This approach also masks the extent to which certain age groups such as children may be at greater risk for certain crimes relative to their numbers in the population.

Minority Groups

Most of these young victims were Caucasian (84.6 per cent) and about a ninth (11.3 per cent) were Indian and Inuit children. In the report by Statistics Canada, *Homicide in Canada: A Statistical Synopsis*, (1976), it was concluded that:

"The Native Peoples are homicide victims far out of proportion to their relative population size. While Native Peoples constituted 1.2% of the population in 1961 and 1.5% in 1971, 16% of Canada's homicide victims since 1961 have been Indian, Metis or Eskimo. Homicides among the Native Peoples are committed disproportionately and mainly in the context of domestic relationships."[10]

A similar trend exists for child homicides involving sexually related offences. If 1971 is taken as a midpoint in the listing of the homicides for 1961-1980, then the proportion of Indian and Inuit children under age 16, which was higher than for other Canadians, was 2.14 per cent of all Canadian children. If the general ratio is applied on the basis of the 151 child homicides whose racial origin was known during this period, three of the homicides would be expected to have been against Indian or Inuit children. In contrast, the homicide register listed 17 deaths, or 11.3 per cent of the total, as being Indian and/or Inuit children who were killed in sexual assault homicides.

While the number of children involved is small, this finding, if it is considered by itself, appears to indicate that Indian and Inuit children are a highly vulnerable group having over four times the number of the deaths that would be expected in terms of their numbers in the general population. A comparable imbalance is found among the persons who were charged with these crimes with Indian and Inuit males constituting 8.9 per cent of the suspects or offenders, or over five times the number that would be expected in terms of their numbers in the general population.

Because of extensive intermarriage between persons from different groups, most Canadians have a mixed cultural background. The identification of an individual's ethnicity in official statistics is based on an arbitrary labelling that has little to do with the values actually held by individuals. There is no uniformity between different classification systems used by official agencies in identifying a person's cultural background.

In the collection of Canadian Census Statistics, persons are asked to which cultural group their male ancestor who originally came to this country belonged. If there is uncertainty on this, then the language spoken by that male ancestor is used as the basis to determine a person's ethnicity. In the information fact sheet used by the National Register of Homicides, the category listed as "racial origin" includes : Caucasian, Negroid, Mongoloid, Canadian, Indian, Eskimo and Inuit. The instructions for completing this item on the form provide no definition of how the police, the courts and the correctional services should proceed in identifying an individual's "racial" background. The decision in completing this item is made without the benefit of having uniform criteria set out for each responsible official to follow. Canadian Census Statistics and Homicide Statistics identify respectively, then, a person's *ethnic* background and *racial* origin, two categorically different social facts.

Considerable caution is warranted in the interpretation of homicide statistics which, at face value, apparently show that Indian and Inuit people commit

homicides "far out of proportion to the relative population rates." This caveat should also be heeded with respect to child homicides involving sexually related offences. The findings may be valid. However, the evidence upon which they are based is seriously flawed. A more consistent and accurate identification of the cultural and/or racial origins of all Canadians is required before conclusions can be reached about the vulnerability as victims, or the likelihood of committing crime, of any particular group in the population.

The Assailants

In comparison to all Canadian males, the men who were charged with these homicides were disproportionately older teenagers (32.5 per cent) or younger adults (45.8 per cent between 21-30 years). One in seven of the suspects (13.5 per cent) was 17 years-old or younger.

The majority of these assailants were single (66.7 per cent) and most had dropped out of school as soon as they had passed the minimum age educational requirement (81.5 per cent with grade 10 or less schooling). For those whose prior employment was known, many had been unemployed (43.2 per cent) or had worked in unskilled jobs as labourers (30.1 per cent). One in 10 of the suspects (10.3 per cent) was a student when he had committed the homicide.

Between 1961-80, 156 child homicides having sexually related offences were reported to the police across Canada. Two in five (42.9 per cent) of the crimes resulted in the offenders being sentenced by the courts to life imprisonment and an additional one in 10 (10.3 per cent) was given a lesser sentence ranging from under two to over 10 years in prison. Among the rest of the cases were instances in which: suspects were known (30 cases); suspects who were subsequently acquitted (15); and some who had committed suicide (5) or who were judged to be insane (1). Three cases were handled under the *Juvenile Delinquents Act*.

Type of Association

Nine of the child homicides involving sexually related offences (8.1 per cent of all young victims for whom this information was known) were committed by a person having a kinship or domestic relationship with the children. These suspected offenders included: a brother/half-brother; two uncles; four cousins; a foster brother; and a parent's common-law partner. Because of the method of classification, by definition, the majority of the crimes were committed by persons who did not have close domestic or position of trust relationships with these children. That more of the killings were committed by persons who were well known to the children than is reported in these statistics appears to be indicated by the nature of the locations where these killings occurred. About

a third of the homicides (31.8 per cent) occurred either in the homes of the victims or the suspects, and one in 11 (9.3 per cent) in other private locations. Only a quarter (23.7 per cent) of the child homicides had been committed in public places such as parks, streets or alleyways. The remainder of the deaths occurred in an assortment of other locations.

Two boys and seven girls had been killed in sexually motivated homicides by members of their families, households or relatives. There is no separate category in the national register of homicides that distinguishes homosexually motivated killings. The likelihood that young males may be a highly vulnerable group when these types of crimes are committed is indicated by the fact that for 22 of these 25 deaths, a non-domestic criminal act was reported with all of the suspects or convicted offenders being males.

Classification of Sexually Motivated Homicides

Each homicide file in the national register lists information on: the selected characteristics of the victims; the circumstances of the incidents; and the legal actions that were taken. While there is a relatively detailed specification about each homicide that, by definition, constituted the most serious offence, there is no listing of the related charges which may have been laid in connection with these deaths. The classification of the incidents occurring in connection with the homicides is given under one of five categories. While this listing provides for continuity in the analysis of homicides since 1961, when this format was adopted, the classification codes developed at that time assumed that certain types of crime either did not occur or happened so rarely that their separate identification was not warranted. As a result, it is not certain that all reported instances of homicides involving sexually related offences are, in fact, identified. There is no sufficiently detailed listing of the relationships between victims and suspects to permit an accurate specification when children and youths were killed as to how many of these acts were committed by persons who were responsible for them, were in positions of trust to them, or may have had an established sexual relationship with them.

The elements of the acts that are committed in relation to reported homicides are classified under one of five categories. Under one of these categories, *Incidents Committed During the Commission of Other Criminal Acts*, the episodes that are listed include: rape, sexual assaults and sexually motivated attacks. Information listed under this category is the exclusive basis for the identification of the number of homicides involving children and adults who may have been sexually assaulted.

In the completing of the homicide records that are included in the national register, the elements comprising these incidents may be classified under a number of headings including: a sexually motivated offence; a sexual assault; revenge; jealousy; anger; or self-defence. Because of the overlapping nature of some of these categories, certain homicides such as those involving incest or

homosexual relations could be equally well listed as resulting from revenge, jealousy or anger.

The listing of the elements of homicides that involve a *Domestic Relationship* includes incidents committed by: members of the immediate family; other relatives; and common-law situations. Beyond this listing, there is no specification of the identity of these "other" persons who may be responsible for the children. This type of information is subsumed under other categories. Included under the category of *Social or Business Relationships*, for instance, are: lovers' quarrels or love triangles which are designated as personal relationships, such as: fiance/fiancee; boyfriend/girlfriend; mistress/lover; and homosexual relationships. In addition to these relationships that, by definition, involve close personal contacts, the category of *Social or Business Relationships* also subsumes situations involving persons having positions of trust to children, such as: employers/fellow workers; teacher/student or live-in babysitters.

The inclusion of these types of relationships under the broad classification of *Social or Business Relationships* means that important and essential information is lost, or cannot be retrieved, in the analysis of certain types of sexually motivated homicides involving children. The aggregate listing of all such relationships together precludes the separate specification of persons whom the children may know or who may be responsible for them. This method of classifying the elements of the incidents related to homicides serves to perpetuate the conclusion that most of the deaths are committed by persons who are casual acquaintances or who are unknown to the children. It is unknown if this conclusion is valid. Based on the general findings of the national surveys undertaken by the Committee, it is likely that a significantly higher proportion of these child homicides is committed by persons whom these children knew than is indicated by the findings of the register. In this respect, the classification system that is used in the national register about the association between victims and offenders masks and undoubtedly underreports the actual situation.

Recidivism

Reported statistical information is incomplete about the convicted dangerous sexual offenders who killed children. While they are few in number and constitute an unrepresentative group, they provide a stern reminder questioning the validity of a number of assumptions about child sex offenders and their management by the helping and enforcement services.

The national register of homicides does not assemble detailed information on the prior records of the offenders listed in its recording system. In the absence of such information, no conclusions can be derived from this source about whether these violent crimes are isolated single assaults, or whether they constitute the culmination of a number of minor offences that may have been previously undetected, or if reported, may have involved charges being laid on

other grounds. The prevailing assumption in much of the research on sexual offences is that while persons committing minor sexual infractions are an intolerable nuisance, it is often concluded that: they are harmless; they are unlikely, once identified to authorities, to repeat these infractions; and they are better dealt with by being fined, by being reunited with their families or by means other than imprisonment that may prove detrimental to their subsequent rehabilitation.

The validity of these assumptions is challenged by the popular belief that there is a progression from minor to more serious sexual offences and by the findings of a number of in-depth studies of convicted sexual offenders who have had extensive prior experience involving unreported and reported crimes that are listed under other categories.

As noted in Chapter 9, *Exposure Followed by Assault*, and Chapter 40, *Recidivism*, the research that concludes there is no progression from minor offences, such as peeping or voyeurism, the stealing of women's clothes or exhibitionism to more serious crimes of sexual violence, derives either from official records or small numbers of offenders who were studied during a short period of time. The assumption of the former type of study is that the listing of police charges or prior convictions reflects accurately the extent to which these crimes were committed.

The assumption that there is no progression from less serious forms of sexual deviance to acts of sexual violence is challenged by a number of in-depth studies of the prior criminal records of convicted sexual offenders. These studies indicate a substantially higher incidence of unreported crimes and of reported crimes involving sexual offences having charges laid under other statutes such as robbery, break-and-enter or contributing to juvenile delinquency. While initial reports on the sexual behaviour of men and women undertaken by the Institute for Sex Research established by A.C. Kinsey concluded that there was no progression from minor to serious sexual offences being committed, the Institute's subsequent study of convicted sexual offenders challenged these premises. In the latter study, numerous instances of recidivism were found involving prior sexual crimes against adults with even higher rates occurring in incidents in which children were victims. The study concluded that among these convicted sexual offenders that:

> "some 56 per cent had juvenile records. . . a precocious criminal development; almost one-fifth committed juvenile sex offences;. . . the aggressors display. . . 3.9 convictions per man;. . . over half of the convictions were for sex offences;. . . offences against property. . . (constituted). . . 18 per cent;. . . 28 per cent of their sex offences involved voluntary heterosexual contact; over one third of the offences were exhibitionism."[11]

In commenting upon the relationship between exhibitionism and peeping, the Gebhard Report noted that: "the stereotype of the timid, harmless peeper need not interfere with our finding that nearly one-fifth of these aggressors'

sex-offence convictions were for peeping: after all, a certain amount of reconnaissance is necessary in selecting the object, time and place for rape. . . a certain amount of exhibition and aggression can be expected to be associated, since some exhibition constitutes a hostile act directed against females."[12]

Two Canadian studies of homicidal sexual offenders have documented the high incidence of previously committed minor sexual offences. Cormier's review of a small number of dangerous sexual offenders found a progression from minor to more serious and sadistic crimes.[13] D.J. West and his colleagues, in an in-depth analysis of 12 serious sexual offenders who were in custody during the mid 1970s at the Regional Psychiatric Centre at Abbotsford, British Columbia, found that prior to the offenders' present convictions, an average of about three previous sexual offences had been committed.[14] Most of the prior offences had been undetected. Where instances of robbery or break-and-enter had been reported to the police, most were acknowledged by the offenders to have been sexually motivated acts, e.g., break-and-enter in order to steal women's clothing.

Among the 12 serious sexual offenders, five had no prior police records, two had been fined and/or cautioned, and five had been previously in prison. In the course of group therapy, the acts that the men admitted they had been involved in included: attempted sexual assaults (six); incest/incestuous behaviour (four); voyeurism or peeping (four); sexually motivated break-and-enter (five); group sex when they had been adolescents or with a teenager (three); homosexual acts (as victims or prostitutes); taking nude pictures (one); and exhibitionism (one.)

Among the 25 sexual offences in which children were involved as partners or victims, 20 (80 per cent) had not been detected by enforcement authorities. Three of the five incidents known to the police resulted in cautions or fines, and in two instances, sentences to a reformatory or prison. Eight of the 25 offences having juvenile victims had involved assaults on unwilling partners. None of these was reported at the time they were committed. Among the 17 offences reported by the prisoners to have been consensual acts (their victims may have thought otherwise), five became known to the police. Of these, most were reported by parents who wished to break up the relationships between their daughters and the offenders. In one instance, the police came upon the participants while an assault was occurring in a car.

Prior to 1975, the Inmate Record System, which was the forerunner of the Offender Information System, assembled a limited amount of information about inmates who were incarcerated in federal penitentiaries. When a prisoner was released on supervision, information about his subsequent activities was not obtained unless he was re-admitted to prison. Prior to 1955, when the Offender Information System was introduced, no information was collected about the major offence category and neither system coded information on the victims of homicides. This type of information was assembled separately by Statistics Canada.

In order for information from these separate sources to be linked, an identification is required listing each inmate's name and number. Following this step, a manual check of the files of inmates who have been discharged is required in order to determine if following their release that further offences may have been committed.

Because of the separation of the main sources of information about persons who have committed homicides and the complexity involved in the identification and retrieval of information about the offences that they may have committed following their release, **no annually updated and centrally maintained source of information is available for Canada about whether the persons who committed sexually related child homicides were involved after their release in committing further sexual offences against children.**

Homicide Statistics Program

Based on its review of the findings assembled in the national register of homicides, the Committee concludes that the current practices followed in the classification of related incidents and the relationships between victims and suspects may substantially under-report sexual assault child homicides. Published findings in this respect are misleading and inaccurate. There is insufficient specification in the initial reporting protocol defining precisely what related acts are committed, over what period of time, or by whom relative to persons whom the children know or who are responsible for them.

Opinion is divided and the available evidence is fragmentary on the issue of whether or not there is a progression from acts of minor sexual deviance to more serious crimes of sexual violence. The absence of reasonably firm information on this important question is a serious gap in providing adequate protection for adults and children and raises questions about the efficacy of existing enforcement and correctional procedures.

The existing systems of collecting and reporting statistics on homicides pay little attention to the victims of these crimes, whether they are children or adults. The information systems operate in such a way as to preclude obtaining a detailed appraisal of the recidivism of all categories of offenders. This is a glaring omission about an issue that concerns most Canadians. If such information were to be collected on a systematic and annual basis, it would permit an evaluation of the effectiveness of different sentencing practices, the benefits that may be gained from the various types of treatment provided for prisoners who are in custody, and the efficacy of the different types of prison settings (minimum to maximum security) in which prisoners are housed.

The means to obtain this important information about this group of offenders are available. The opportunity to assemble this type of information is hindered by the statistical systems that are now in place. In the Committee's opinion, it is mandatory that the existing information retrieval systems be

revised to identify information on the recidivism of persons who have committed sexually motivated homicides with the results being published annually about the experience of particular types of discharged inmates.

In relation to Recommendation 35 given in Chapter 3, **the Committee recommends that the existing classification of homicides be reviewed by the Office of the Commissioner in conjunction with an interagency body (including officials of Statistics Canada, the Department of Justice, the Department of the Solicitor General, the Department of National Health and Welfare and the Canadian Association of Chiefs of Police) with the purpose of developing:**

1. **A full listing of all sexually motivated homicides committed against children;**
2. **A detailed specification of the relationships between young victims and persons suspected, charged or convicted of these offences;**
3. **The listing in detail of the prior criminal charges of persons convicted of homicides; and**
4. **The assembling and the reporting on an annual basis of the recidivism experience of persons convicted of sexually motivated homicides against children and youths.**

The Committee recommends further that in the collection of official criminal statistics and the records of the national register of homicides, these issues be studied comprehensively on a continuing basis to provide for a sufficient longitudinal review and that these results be published annually.

Summary

1. Between 1961-80, the reported incidence of sexual assault child homicides rose from 2.9 to 7.2 per million children, or an increase of 148 per cent during this period.
2. Sexually motivated killings of children involved many who were very young including: 11 between 2-6 years, 29 between 7-11 years, 21 between 12-13 years and 25 between 14-15 years.
3. The most frequent ways that these children were killed were: strangling (34.6 per cent); beating (20.5 per cent); and suffocating (9.0 per cent).
4. Alcohol and/or drugs were reported to have been used by the perpetrators in about one in four of these deaths (23.1 per cent).
5. Weapons had been used in about a third of these deaths (29.2 per cent).
6. In relation to the total of all homicides involving children as victims, children age 15 and younger against whom sexual and assault homicides are committed are an especially vulnerable group. Over two in five (43.3 per cent) of all reported sexual assault homicides involve children in this age group.
7. The existing system for the classification of sexual assault homicides provides inadequate information about certain essential elements that are involved in the committing of these crimes.

References

Chapter 10: Children Who Were Killed

[1] Canada. Statistics Canada, Justice Statistics Division. *Homicide in Canada: A Historical Synopsis*. Ottawa: Department of Industry, Trade and Commerce, No. 4-2400-502, 1976, p. 196.

[2] *Ibid.*, p. 194.

[3] Parizeau, A. and D. Szabo, *The Canadian Criminal Justice System*. Lexington, Mass.: Lexington Books, 1977, p. 49.

[4] McDonald, L., *The Sociology of Law and Order*, Toronto: Methuen Publications, 1979, pp. 224 and 6.

[5] *Ibid.*, pp. 5, 6 and 250.

[6] *Ibid.*, p. 236.

[7] *Ibid.*, pp. 155, 175.

[8] Parizeau, A. and D. Szabo, *op. cit.*

[9] McDonald, L., *op. cit.*, p. 145.

[10] Canada. Statistics Canada. *Homicide in Canada, op. cit.*, p. 86.

[11] Gebhard, P.J., J.H. Gagnon, W.B. Pomeroy and C.V. Christenson, *Sex Offenders: An Analysis of Types*, New York: Harper and Row Publishers, 1965, pp. 168-9.

[12] *Ibid.*, pp. 193, 169.

[13] Cormier, B.M. and S.P. Simons, The Problem of the Dangerous Sexual Offender, *Canadian Psychiatric Association Journal*, 14, 329-35, 1969.

[14] West, D.J., C. Roy and F.L. Nichols, *Understanding Sexual Attacks*, London: Heinemann, 1978.

Part III

The Law

Chapter 11

Legal Status of the Child

The legal issues within the mandate of the Committee are complex, and have implications for the content and implementation of laws enacted at all levels of government. Providing an overview of the legal issues considered in this section of the Report, the Canadian legal response to the sexual abuse of children is examined in this chapter in relation to: the traditional policy of the law in treating children as a special class; the principles of law relating to child welfare and to young offenders; and the criminal law of sexual offences against children.

Children as a Special Class

The law has traditionally treated children as a special class[1] which competed with other social interests for legal protection, for instance, the autonomy of the family and the integrity of the trial process. As the findings given in this Report make clear, the manner in which these ostensibly conflicting aims have been resolved does not always provide optimal protection for children and youths against those who abuse and exploit them sexually.

The special legal status of children[2] in Canada is based primarily on three considerations: the special needs of children who, by reason of their age and immaturity, need the care and guidance of others in order to develop into healthy, responsible adults; the substantial vulnerabilities of children to persons older and in many senses more powerful than they; and the actual or presumed incapacity of children to perform certain legal acts of daily life. These special needs, substantial vulnerabilities and natural incapacities (all of which diminish to some extent as the child grows into adolescence and young adulthood) have as their legal consequence both the removal from the child of legal powers otherwise enjoyed by adults and, conversely, the imposition of special duties and responsibilities towards the child on members of society generally. Although the nature and extent of these duties towards children vary depending on the relationship between the child and the other person, a child's legal status is in one sense absolute since it affects all persons with whom the child deals.

Society has a vital interest in ensuring that its naturally weaker members are protected by legal safeguards against the naturally stronger, and particularly, that the welfare and advantage of its children and youths will be protected and fostered.

The conferring by the State of this special status is intended to promote the welfare and protection of young persons in two complementary ways: the legal incapacities and disabilities which the child possesses are imposed primarily for his or her own protection, while the various legal duties and responsibilities imposed on others towards the child raise the social interests in the nurturance and protection of children to a legal plane and, it is hoped, thereby strengthen them.

The justified concerns of society are manifested in many aspects of the child's life. In the areas of education, employment and medical care, to take only three examples, the statute books are rife with illustrations of how the law treats children as a special class, in recognition of their special needs and vulnerabilities. Similarly, by mandating state intervention and penal sanctions where transgressions are found to occur, the criminal law and the law of child welfare express, in different ways, the importance that society places on protecting children from abuse or exploitation. The policy of the law is not to deny that children from an early age have a developing sense of their own sexuality, but rather to ensure that this normal and healthy sexual development is not interfered with by others.

Several considerations combine to justify beyond question the role of legal intervention in this context:

1. The protection of children against abusive or exploitative interference with their bodily integrity;
2. The entitlement of young persons (backed up by such safeguards as the law can provide) to express their sexuality on an equal and genuinely consensual basis;[3]
3. The deterrence of others from violating the trust implicit in all adult-child relationships, by exploiting a child's emotional and sexual vulnerability, or by involving developmentally immature persons in sexual acts which they do not fully understand and to which they are unable to give an informed consent;[4] and
4. The deterrence of others from involving young persons in sexual acts, for example, anal or vaginal intercourse, that may be physically and emotionally harmful to the young person.

Concerning the issue of access by young persons to pornographic materials, other social interests come into play, and these are related to the law's policy of prohibiting interference with a young person's sexual development. Indiscriminate exposure to children of pornographic depictions may distort in an unhealthy way their perceptions of relations between the sexes and communicate an attitude whose impact, by reason of the child's impressionability, may have an effect out of all proportion to the social utility of allowing

them free expression. Further, the ready accessibility of pornography to young persons may serve to compromise the parental role in educating his or her child in sexual matters. The Committee believes that the most appropriate persons to determine how a child should be introduced to and instructed in matters of human sexuality are the child's parents and educators, not the purveyors of pornography. The ready accessibility of pornography to children is incompatible with this aim, since it has the consequence of allowing children to be exposed to influences to which their parents may well prefer them not to be exposed.The same considerations apply to the sale and distribution of pornography to children.[5]

Our review thus far has concerned how Canadian law, in recognition of the child's special needs, substantial vulnerabilities and natural incapacities, has clothed children with a special status which has legal implications for all persons who deal with the child, although these implications vary depending on the context. Of course, the needs, vulnerabilities and incapacities of children change and, to some extent, diminish as the child matures into adolescence, young adulthood, and eventually attains the age of majority. These developmental changes are reflected in corresponding changes in the young person's legal position. As Graveson has observed:[6]

> The picture of status cannot be painted in elemental colours of black and white. The common law of which status forms part demands a rich variety of intermediate shades conditioned by the specific function that each of its rules is designed to fulfill. Over so long a span of early human life subdivisions, each of which may perhaps constitute a status within the greater status of infancy, are inevitable . . . Within the general limits of infancy can be found the most illuminating instances of the relative and functional use of the concept of status.

The law has traditionally recognized that the span of life from birth to adulthood is too extensive to be treated as a single legal unit, and that distinctions concerning both the legal capacities of children and the legal duties and responsibilities towards children need to be made between children of different ages and at different stages of development. For the most part, these legal distinctions have been based on whether the child has attained certain ages below that of majority. The general body of law of any legal system cannot deal with society as individuals, but only with classes of individuals whose membership in a given class can be determined by well-defined distinctions, for example, by a person's attainment or non-attainment of a certain age. The child's legal personality at a given age is intended roughly to correspond to the level of intellectual, maturational and emotional development displayed generally by children of that age, and is of necessity, coloured by each society's contemporary social views of childhood.

An example of social and legal conceptions of childhood in eighteenth-century England is provided in the writings of Sir William Blackstone,[7] a highly influential jurist of that period. According to Blackstone, a boy had the capacity to "swear allegiance" at 12 years-old, to marry at 14, and to be an executor of an estate at 17. A girl might be betrothed at seven years-old, at

nine was entitled to dower, at 12 could marry, at 14 could select her guardian, and at 17 could become executrix of an estate. The various capacities of the child of which Blackstone wrote have their contemporary counterparts in Canadian law at both the federal and the provincial levels. Statutes differ, for example, even as to when a child ceases to be a "child" in various contexts. The sharp variations in the ages selected for certain purposes in different jurisdictions attest to the complexity of the issues in the whole area of children's law.

Within the general body of the law dealing with young persons, several specific issues emerge which are directly relevant to the issue of child sexual abuse and exploitation. As each of these issues is dealt with in other chapters in Part III of the Report, only an introduction is provided here. One such issue is the age at which a young person ceases to be a "child" for the purposes of child welfare proceedings, and thus, in general, ceases to be eligible for the protective services and ameliorative intervention offered by the child welfare system in each province and territory. Another issue is the so-called "age of criminal responsibility", which is the age below which a child is, due to his or her natural or presumed incapacity, exempted from criminal responsibility (although the child's actions may prompt the intervention of the child welfare authorities). A third, related issue is the age at which a young person becomes an adult in the eyes of the criminal law, and henceforth, becomes subject to the procedures and penalties of the ordinary criminal court system.

Perhaps the most difficult legal issue is whether the criminal law strikes an appropriate balance between protecting children from sexual abuse and exploitation, on the one hand, and permitting the sexual expression of young persons as they proceed through adolescence into young adulthood, on the other. Where young children are involved, there can be no doubt in the Committee's judgment that the proscriptions of the law are amply justified, and attempts by some to champion the sexual rights of children and youths to engage in sex with whomever they please are transparent, dangerous and intellectually dishonest. The Canadian criminal law of sexual offences has traditionally prohibited certain sexual acts when engaged in with a person under certain ages (notably, 14), notwithstanding that the younger person may have in fact consented to the act. Recent criminal law proposals blur these distinctions, and would confer on young persons more sexual autonomy than they have traditionally enjoyed. The implications of these proposals (some of which are now part of Canadian law) are considered later in the Report.

Although the policy of the law in providing children and youths with protection against sexual abuse and exploitation is surely justified, there is a related legal area where, in the Committee's view, the law's approach to children is inappropriate: the legal principles which apply to children's evidence. In prosecutions of sexual offences against children, the testimony of the child victim typically is crucial to proving that the offence was committed. The legal issues concerning children's evidence are complex and are reviewed elsewhere; it suffices to state here that the law places serious fetters both on the legal effect of the child's testimony, if received. In the Committee's judgment,

upholding the integrity of the trial process and the conscientious removal of the legal fetters which prevent children from speaking effectively on their own behalf are not incompatible aims.

The difficult social and legal issues which arise when child sexual abuse occurs within the family also illustrate the nature of the problems of status. Just as the law, for important reasons of public policy, confers on children a protective legal status, so does it confer on the parties to a marriage that of the legal status of husband and wife, in order to make that relation a firmer foundation for society. Until recently, for example, there were some sexual offences for which the wife or husband of a person charged with such an offence was neither competent nor compellable to testify against his or her spouse, regardless of the potential relevance of the spouse's testimony.[8] Moreover, laws at both the federal and the provincial levels continue to prevent a spouse from being compelled to disclose communications made to him or her by the other spouse during their marriage, even where such a disclosure might be crucial in the investigation of an allegation of child sexual abuse. These exceptions have been justified historically as protecting the sanctity of marriage; their current appropriateness is commented upon later.

Reference has been made to the fact that the young person's legal status is in one sense absolute, since it affects (although in varying degrees) everyone with whom the young person deals. The young person also has, however, a separate and additional status in relation to his or her parents. Towards them, he or she has the legal status of their child, and they have the corresponding legal status of parents, with all the rights, duties and responsibilities that this relationship implies. Speaking generally, the duties of parental status are fixed in nature, though unlimited in number and frequently in duration. There is obviously no specific number of occasions on which a parent is required to act parentally in favour of his or her child. In this regard, the law allows parents a good deal of discretion concerning how these responsibilities will be discharged.

On principle, society will intervene only when a child's parent or guardian acts in a manner that is demonstrably adverse to the child's welfare. The sexual abuse or exploitation of a child by a person responsible for the child's care is a contemptible violation of family and public trust, and is viewed by the law as warranting immediate and effective state intervention. Depending on the circumstances, the child may be considered to be in such jeopardy as to require the temporary or permanent abrogation of the parent-child relationship, and the substitution of another, more propitious legal relationship in its place.

The Child in Need of Protection

That parents will conscientiously provide for their children's needs, and respect and safeguard their children's vulnerabilities, is the central assumption underlying the legally conferred status of parent and child. When a child is sexually abused or exploited by his or her parent, or by a person otherwise

under a duty of familial care towards the child, the law authorizes an agency of the State to intercede on the child's behalf. Each Canadian province and territory has legislation which authorizes state intervention into the affairs of a family in which a child's welfare has been placed in jeopardy. These statutes variously define, often in very broad terms, the situations that will render a child "in need of protection" so far as the law is concerned, and outline the steps which may be taken to ensure the child's well-being. In each jurisdiction, a child who is suspected to be in need of protection may be "apprehended" by an official of a child protection agency. The child may be kept in care pending a judicial hearing to determine whether the child is in need of protection and, if so, the most appropriate legal means of ensuring the child's security and well-being. Although child sexual abuse is not identified in all jurisdictions as a specific harm rendering a child in need of protection, the legislation in all jurisdictions is sufficiently broad to subsume it. There is no question that a child who is sexually abused or exploited in his or her family context is "in need of protection" within the legal meaning of that phrase.

The eligibility of a young person for the protective services and ameliorative intervention afforded by child welfare agencies is contingent upon the young person's age. Legislation in each province and territory defines a "child" as a person who has yet to attain a given age, thereby delineating the class of persons at whose protection and welfare the legislation is primarily directed. For these purposes a "child" in British Columbia is a person under 19; in Prince Edward Island, Quebec, Manitoba, Alberta and the Yukon, a person under 18; and in all other provinces and territories, a person under 16. These variations betray something of the conceptual, if not the economic, arbitrariness of using age as the criterion to determine whether a person should be entitled to the benefits of a particular legal status.

Reference was made earlier to the inevitable tension between the firm policy of the law in protecting the welfare of children, on the one hand, and its policy of safeguarding the autonomy of family life, on the other. In cases of intra-familial sexual abuse, the latter consideration is subordinated to the former; the promotion of the child's physical and emotional well-being is considered paramount. Even so, the strength of the legal presumption in favour of protecting the parent-child relationship is such as to exert an appreciable influence in many areas of the child welfare system. The following principles, quoted from a 1979 child protection case, were intended to be representative of judicial attitudes on this subject:[9]

1. That by nature and tradition we live in a familial society founded on blood ties and natural affection which has created a legal presumption that the child belongs with its natural parent.

2. That this presumption may in the individual instance be rebutted only by the most serious reasons, in which case the State is justified in intervening and severing that natural parent-child relationship.

3. That the point at which the State is so justified in intervening is that point at which in the judgment of the Court, the child is being subjected to conditions or treatment which cannot be tolerated.

4. That the "best interest" rule applicable in interparental custody issues, whether under the Divorce Act, Family Law Reform, or similar legislation, differs from the criteria applicable in custody issues as between the parent and the State.

5. That in determining State intervention, the family environment must be examined in its particular context, as opposed to traditional "middle class" standards, and in the light of whatever potential it might have.

6. That the potential of the family is to be assessed having regard to whatever support and assistance may be offered by contemporary social service agencies, whether government or private, whose role, and indeed, whose duty it is to provide those support services.

7. That the proper role of professional social service workers is to expend their expertise in delivering that support, to inform the Court of the availability and limits of those resources, and not to pass subjective judgments with respect to disposition.

8. That the Court should intervene, and declare the natural right of the parent to the custody of the child be forfeited, severing the parent-child relationship, and grant permanent custody to the Director, only when the positive resources of the State have proved to be ineffective or inadequate, and the health of the child, whether physical or emotional, is in apprehended jeopardy.

As is implicit in these judicial comments, there are two basic issues that call for legal determination at a child protection hearing. First, is the child in need of protection or, to put the issue in more broadly legal terms, have the agencies of the State justified the necessity of intervening into the life of the child and of his or her family? And second, if so, what form should this remedial state intervention take in relation to the child and his or her family?[10] Where a child is found to be in need of protection, the legal disposition of the matter may take three basic forms: the child may remain at home, subject to the supervision of a child welfare agency (and subject also to the removal of the offender from the home), or the child may be removed from the home, either temporarily or permanently.[11] In its role as the authorized agent of the State in matters concerning the welfare of young persons, the child welfare agency is responsible for providing the broad range of custodial, medical and therapeutic services necessary to the carrying out of its mandate.

Notwithstanding the relative clarity of the legal principles pertaining to intra-familial child sexual abuse, the proper, day-to-day application of these principles by child protection workers to the unique facts of a particular case is, to understate the matter, a complex and difficult undertaking. The Committee's review of provincial child welfare legislation and its research findings concerning these issues are presented in Part V of the Report, *Child Protection Services*.

One of the principal purposes of provincial child welfare law is to protect children and youths against sexual abuse by persons who have a special duty of familial care towards them, for example, the child's parents or guardians. The nature of official interventions by child welfare authorities on the child's behalf is influenced by a recognition of the special problems posed by child sexual abuse in a family context. The institutional emphasis here is on protecting and fostering the welfare of the victimized child, rather than on punishing the abuser. In contrast, the criminal law has a wider and more denunciatory role to play where child sexual abuse or exploitation is found to occur, whether within or outside the family. The role of the criminal law in this context is considered in Chapter 12, *The Sexual Offences*.

References

Chapter 11: Legal Status of the Child

[1] Several of the issues reviewed here have been adapted to the Canadian context from Graveson, *Status in the Common Law* (London: University of London, The Athlone Press 1953).

[2] Section 91(24) of the *Constitution Act, 1867*, confers upon the federal Parliament the power to make laws in relation to "Indians, and Lands reserved for the Indians." On the special constitutional status of Indians (and hence of Indian children) in Canadian law, see Hogg, *Constitutional Law of Canada* (Toronto: Carswell, 1977) at 383-90).

[3] Kempe, *Sexual Abuse, Another Hidden Pediatric Problem: The 1977 C. Anderson Aldrich Lecture* (1978), 62 Pediatrics 382.

[4] *Ibid.*

[5] Law Reform Commission of Canada, *Working Paper 10, Limits of Criminal Law* (Ottawa: Information Canada, 1975).

[6] Graveson, *Status in the Common Law* (London: University of London, The Athlone Press, 1953) at 3,20,21.

[7] Blackstone, *Commentaries on the Laws of England* (1st ed. Oxford: Clarendon Press, 1769), at 451.

[8] Namely, the former offences of indecent assault on a female and indecent assault on a male. A January, 1983 amendment to the *Canada Evidence Act* makes the wife or husband of a person charged with a sexual offence competent and compellable to testify against his or her spouse in virtually all instances.

[9] *In the Matter of Charles Littner et al.* unreported, June 3, 1979 (P.E.I.S.C. Fam. Div.).

[10] Bala, Lilles, and Thompson, *Canadian Children's Law* (Toronto: Butterworths, 1982) at 144.

[11] *Ibid.*

Chapter 12

The Sexual Offences

Canadian legislators have always considered that the sexual abuse or exploitation of young persons is a matter of serious public concern which amply justifies the sanctions of the criminal law. This concern is borne out by the history of the Canadian criminal law of sexual offences since the mid-eighteenth century. This chapter provides an overview of the major sexual offences in Canadian law,[1] including some recently repealed, and their evolution. Offences related to prostitution and obscenity are presented elsewhere in the Report.

Classification of Offences

The result of the historical development of the major sexual offences is an unevenness in the protection afforded children. Some of this is due to the limitations of the concepts used in the offences, and some is due to the fact that some offences were developed without any particular consideration being given to children as victims. An example of the former is the inappropriateness of the assault model to deal with invitations to young children to touch the genitals of other persons. An example of the latter is the offence of incest which prohibits sexual intercourse between persons within certain blood relationships, but does not exempt a young victim, though the court is not required to impose any punishment on a convicted female who acted only under restraint, duress or fear.

Many of the sexual offences are act-specific; this is consistent with the focus by the Committee in its research on specific acts which, however, unlike the offences in the *Criminal Code*, are not likely to change over the years. Changes in the offences over time are understandable, as are changes in charging practices and in judicial attitudes. The danger is that the objective of providing effective protection may be lost sight of in the complex process of legislative amendment. For example, as the Committee's Recommendations demonstrate, act-specific offences can apply equally to persons of both sexes. However, it is unrealistic to insist on this where comprehensive research discloses that the specific conduct involved is committed exclusively by persons of one sex against persons of the other sex. In these cases, the aim of sexual equality in the application of the offence serves no useful purpose.

Some offences are non-specific and potentially include wide areas of human sexual behaviour. Despite their sweep, they do not necessarily provide adequate protection for either adults or children, since their very generality may compel judicial as well as legislative intervention. There is a danger that behaviour which should be prohibited will not be included. Such terms as gross indecency obscure the nature of the conduct involved, which makes it almost impossible to know whether effective protection is being provided to children in all circumstances where it is generally agreed that it should be.

The sexual offences presented in this chapter are divided into the following categories:

1. *Sexual Touching.* This category is divided into two parts. Some of the offences may fall within either part, depending upon the conduct complained of.[2] (One of the offences included in this category prohibits procuring a female to have illicit sexual intercourse with a person other than the procurer).

   - *Non-consensual Sexual Touching*, including intercourse with females, males and animals. This part includes: rape; the sexual assaults*; indecent assault on a female; indecent assault on a male; buggery* and bestiality*; and incest*.

   - *Consensual Sexual Touching*, including intercourse with young females and males, as well as procuring such intercourse. This part includes: sexual assaults* and indecent assaults, where an otherwise valid consent is given by a capable person under the age of 14; buggery*; incest*; sexual intercourse with a step-daughter, foster daughter or female ward*; sexual intercourse by an employer with a female employee under 21*; sexual intercourse with a female under 14 and sexual intercourse with a female 14 or 15*; sexual intercourse with a feeble-minded female; seduction of a female 16 or 17*; seduction under the promise of marriage*; and parent or guardian procuring defilement*.

2. *Other Sexual Behaviour.* These offences are not act-specific and potentially include a wide range of sexual behaviour. This category includes: gross indecency*; indecent acts*; and contributing to juvenile delinquency*.

3. *Use of Premises.* These offences are concerned with ensuring that premises are not used to facilitate the commission of sexual offences, for activity with young females similar to that which occurs in a bawdy-house, or for activity that endangers the morals of children. This category includes: corrupting children*, owner, occupier or manager of premises permitting defilement of a female under 18*, and vagrancy (loitering by convicted sexual offenders in or near certain locations)*.

In the above categories, offences currently in the *Criminal Code* are marked with an asterisk (*). Offences recently repealed are included because of their historical importance and because they were in force when the Committee undertook the collection of information on the sexual offences. However, **while the Committee examined the offences within the framework of the *Criminal Code*, its research focussed directly on the specific acts involved,**

Table 12.1

The Major Sexual Offences in Canada, as of January 4, 1983

Criminal Code Offence	Effect of January, 1983 Amendments			
	Maximum Sentence	Offence Introduced	Offence Unchanged	Offence Modified
Sexual Assault (section 246.1)	10 years' imprisonment or 6 months' imprisonment	X		
Sexual Assault with Threats, Weapon, or Causing Bodily Harm (section 246.2)	14 years' imprisonment	X		
Aggravated Sexual Assault (section 246.3)	life imprisonment	X		
Buggery and Bestiality (section 155)	14 years' imprisonment		X	
Incest (section 150)	14 years' imprisonment			Corroboration no longer required.
Sexual Intercourse with Step-Daughter, Foster Daughter, or Female Ward (section 153(1)(a))	2 years' imprisonment			Corroboration no longer required.
Sexual Intercourse with Female Employee Under 21 (section 153(1)(b))	2 years' imprisonment			Corroboration no longer required. Burden of proof provision & evidentiary presumption repealed. Defence of subsequent marriage repealed.
Sexual Intercourse with Female under 14 (section 146(1))	life imprisonment		X	
Sexual Intercourse with Female 14 or 15 (section 146(2))	5 years' imprisonment			Burden of proof provision & evidentiary presumption repealed.

Table 12.1 (continued)

The Major Sexual Offences in Canada, as of January 4, 1983

Criminal Code Offence	Effect of January, 1983 Amendments			
	Maximum Sentence	Offence Introduced	Offence Unchanged	Offence Modified
Seduction of Female 16 or 17 (section 151)	2 years' imprisonment			Same as above. Also, corroboration no longer required.
Seduction Under Promise of Marriage (Section 152)	2 years' imprisonment			Corroboration no longer required. Burden of proof provision repealed. Defence of subsequent marriage repealed.
Parent or Guardian Procuring Defilement (section 166)	14 years' if female is under 14			Corroboration no longer required.
	5 years' if female is 14 or older			
Gross Indecency (section 157)	5 years' imprisonment			Corroboration no longer required.
Indecent Act (section 169)	6 months' imprisonment		X	
Contributing to Juvenile Delinquency (section 33 of *Juvenile Delinquents Act*)	2 years' imprisonment		X	
Corrupting Children (section 168)	2 years' imprisonment		X	
Owner or Manager of Premises Permitting Defilement of Female under 18 (section 167)	5 years' imprisonment		X	
Vagrancy (section 175(1)(e))	6 months' imprisonment		X	

which are not likely to change. The result is that the findings obtained remain useful in connection with offences recently enacted, and indicate what additional changes could be made to improve protection for children and youths.

The sexual offences should be considered in the light of what has already been said about the status of the child (Chapter 11, *Legal Status of the Child*). From this point of view, there is no doubt that the *Criminal Code* attempts to provide protection for children and youths through certain specific offences. The problem is that it does not give any particular consideration to the position of children as victims of any sexual offence. There is an implicit assumption that the sexual offences operate in the same way regardless of whether the victims are adults or children. The information collected by the Committee, and presented elsewhere in this Report, belies this assumption.

Non-Consensual Sexual Touching

Rape

The former offences of rape and attempted rape were repealed in January, 1983 and were replaced by sexual assault offences which do not require corroboration. Under the former section 143 of the *Criminal Code*, a male person committed rape when he had sexual intercourse with a female person, who was not his wife, without her consent, or with her "consent" if it was extorted by threats or fear of bodily harm, or was obtained by impersonating her husband or by false and fraudulent representations as to the nature and quality of the act. Although the act of sexual intercourse was an element of this offence, it was the circumstances which surrounded that act and the accused's awareness of those circumstances which distinguished consensual sexual intercourse from the offence of rape. The accused must have intended to have sexual intercourse with a woman, knowing that she was not his wife and that she did not consent, or being reckless as to whether she consented.[3] A person who committed rape was liable to imprisonment for life.[4] The offence of attempted rape carried a maximum punishment of imprisonment for 10 years.[5]

Rape had been a crime since the earliest development of the common law,[6] and punishable by death for much of English and Canadian legal history.[7] In 1758, the Nova Scotia Assembly (Nova Scotia at that time also included what are now New Brunswick and Prince Edward Island) enacted the death penalty for rape,[8] but this was eventually reduced to imprisonment for life or for any term not less than seven years.[9] In 1841, the Province of Canada enacted that every person convicted of rape "shall suffer death as a felon".[10] The death penalty for rape was also prescribed by the legislature of New Brunswick prior to Confederation.[11] In Prince Edward Island, the death penalty for rape was abolished in 1861 and replaced by imprisonment for up to 21 years, with or without hard labour, with the male offender also liable "to be once, twice or thrice publicly or privately whipped."[12]

In 1869, rape was made a federal criminal offence punishable by death.[13] An alternative punishment of imprisonment for life, or for any term not less than seven years, was sanctioned three years later.[14] The 1892 *Criminal Code*

provided for the first time in Canada a statutory definition of rape, which clarified the issues of lack of consent and the degree of physical contact required between the male and female sexual organs.[15] It also codified the rule at common law that no male under 14 could in law commit this offence.[16] The definition of rape in Canadian law remained essentially unchanged from 1892 until the repeal of the rape offence in January, 1983.

A provision for whipping convicted rapists was added in 1921.[17] Under the law as it stood previously, only an offender convicted of attempted rape could be whipped.[18] Although convicted rapists were liable to the death penalty until 1955,[19] the sentence of death was imposed for this offence in only one case,[20] and in that instance, the death sentence was commuted to 20 years' imprisonment, with lashes.[21] The provision for whipping offenders convicted of rape or attempted rape was repealed effective July 15, 1972, as part of the abolition of corporal punishment of male criminal offenders.[22]

Rape was never an offence for which corroboration was required by statute, although it was subject to the firm rule of practice that caution was required before convicting the accused on the uncorroborated testimony of the complainant.[23] As part of the 1955 *Criminal Code* revision, the common law rule of practice that it was unsafe for the jury to find the accused guilty on the basis of the complainant's uncorroborated testimony, but that they were entitled to do so if satisfied beyond a reasonable doubt that it was true, was codified and made applicable to the offence of rape.[24] Although this provision made corroboration of the complainant's sole testimony not strictly necessary, the trial judge was still obliged to caution the jury in appropriate cases.[25] The requirement of corroboration where the complainant gives unsworn testimony remained intact.[26]

The above-mentioned statutory "corroboration warning" rule was repealed in 1976[27] and replaced with a provision outlining the conditions under which a complainant could be asked about her prior sexual conduct with persons other than the accused.[28] Section 142 of the *Criminal Code*, which was repealed in January, 1983, provided:

> 142. (1) Where an accused is charged with an offence under section 144 or 145 or subsection 146(1) or 149(1), no question shall be asked by or on behalf of the accused as to the sexual conduct of the complainant with a person other than the accused unless
>
> (a) reasonable notice in writing has been given to the prosecutor by or on behalf of the accused of his intention to ask such question together with particulars of the evidence sought to be adduced by such question and a copy of such notice has been filed with the clerk of the court; and
>
> (b) the judge, magistrate or justice, after holding a hearing in camera in the absence of the jury, if any, is satisfied that the weight of the evidence is such that to exclude it would prevent the making of a just determination of an issue of fact in the proceedings, including the credibility of the complainant.
>
> (2) The notice given under paragraph (1)(a) and the evidence taken, the information given or the representations made at a hearing referred to in paragraph (1)(b) shall not be published in any newspaper or broadcast.

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>
> (b) the judge, magistrate or justice, after holding a hearing in camera in the absence of the jury, if any, is satisfied that the weight of the evidence is such that to exclude it would prevent the making of a just determination of an issue of fact in the proceedings, including the credibility of the complainant.
>
> (2) The notice given under paragraph (1)(a) and the evidence taken, the information given or the representations made at a hearing referred to in paragraph (1)(b) shall not be published in any newspaper or broadcast.

(3) Every one who, without lawful excuse the proof of which lies upon him, contravenes subsection (2) is guilty of an offence punishable on summary conviction.

(4) In this section "newspaper" has the same meaning as it has in section 261.

(5) In this section and in section 442, "complainant" means the person against whom it is alleged that the offence was committed.

In *Forsythe v. The Queen*,[29] the Supreme Court of Canada held that the intent of this provision was to balance the potential trauma and embarrassment caused to the complainant by an inquiry into her past sexual conduct with persons other than the accused, against the right of an accused to make a full answer and defence to the charge. Implicit in this statutory provision was the recognition that, at least in some instances,[30] the past sexual conduct of the complainant with persons other than the accused may be highly relevant to determining the truthfulness of her allegation. Chief Justice Laskin, in commenting on this "balancing of interests", noted:[31]

> The gain of the complainant is that whereas she may now be required to answer the question in public she may not have to do so if the Court rules against it, although she may have to submit to the question in private. As for the accused, whereas he could formerly put the question in public without necessarily being entitled to an answer, he now has the right of answer and the right to contradict it if the Court rules in his favour in the *in camera* hearing.

As part of the same enactment, protection from identification in any newspaper or broadcast was afforded to victims of rape, attempted rape, indecent assault on a female, or sexual intercourse with a female under 14.[32]

Sexual Assaults

On January 4, 1983, a number of amendments to the *Criminal Code* sexual offences were proclaimed in force. They introduced sexual assault offences which can be committed by a male or a female against a male or a female; the maximum punishment available under each offence does not depend on the sex of the complainant (unlike the former offences of indecent assault on a male and indecent assault on a female). Further, a husband or wife may be convicted of sexually assaulting his or her spouse under each of the sexual assault offences, regardless of whether the spouses were living together at the time of the sexual assault.

Section 246.1 of the *Criminal Code* now provides that "every one who commits a sexual assault is guilty of (a) an indictable offence and is liable to imprisonment for ten years; or (b) an offence punishable on summary conviction".[33] This offence is procedurally "hybrid": the Crown has a discretion to proceed either by indictment or summarily, and hence, can directly influence the maximum punishment to which a person convicted of this offence will be liable. The conferring of this discretion is largely explained by the wide range

of unwanted sexual touchings comprehended by the term "sexual assault". Although "sexual assault" is not defined in the *Criminal Code*, it will likely be taken to mean either an assault[34] directed at a person's sexual organs, or an assault which, from the circumstances, was clearly sexually motivated. Accordingly, it could subsume everything from a threatened sexual advance[35] or a pinch on the behind to unwanted sexual intercourse unaccompanied by overt threats or the use or threatened use of a weapon. The ambit of the "sexual assault" offence will be determined by judicial interpretation, as cases of sexual assault are tried, and the results of those trials appealed, in Canadian courts.

Section 246.2 of the *Criminal Code* provides that:

> 246.2 Every one who, in committing a sexual assault,
>
> (a) carries, uses or threatens to use a weapon or an imitation thereof,
>
> (b) threatens to cause bodily harm to a person other than the complainant,
>
> (c) causes bodily harm to the complainant, or
>
> (d) is a party to the offence with any other person,
>
> is guilty of an indictable offence and is liable to imprisonment for fourteen years.

"Bodily harm" is defined as "any hurt or injury to the complainant that interferes with his or her health or comfort and that is more than merely transient or trifling in nature."[36]

This offence is a more serious form of "sexual assault" and is committed when a sexual assault is attended by one of the circumstances outlined in sections 246.2(a) through (d). Sections 246.2(a) and (b) deal primarily with situations in which a complainant's acquiescence in or submission to the sexual act is induced by any of the factors mentioned, while section 246.2(c) is applicable where the sexual assault results in "bodily harm" to the complainant. The definition of "bodily harm" provided in section 246.1(2) is somewhat vague; its proper legal meaning in various factual contexts will doubtless be clarified by judicial interpretation. The section 246.2(d) provision is contravened where a sexual assault is perpetrated by more than one person, for example, the situation formerly referred to as "gang rape".

Section 246.3 of the *Criminal Code* provides that:

> 246.3 (1) Every one commits an aggravated sexual assault who, in committing a sexual assault, wounds, maims, disfigures or endangers the life of the complainant.
>
> (2) Every one who commits an aggravated sexual assault is guilty of an indictable offence and is liable to imprisonment for life.

This is the most serious form of sexual assault.

Section 244 (3) of the *Criminal Code* provides that:

> no consent is obtained where the complainant submits or does not resist by reason of
>
> (a) the application of force to the complainant or to a person other than the complainant;
>
> (b) threats or fear of the application of force to the complainant or to a person other than the complainant;
>
> (c) fraud; or
>
> (d) the exercise of authority.

Where the Crown proves that the complainant submitted to or did not resist the accused by reason of one of these factors, the complainant's acquiescence is not considered a valid consent in law. Accordingly, an accused in this instance is guilty of a form of sexual assault, depending on the additional circumstances which attended the assault. The "vitiating" factors in section 244(3), especially those in sections 244(3)(c) and (d), are very broad and will require judicial elucidation in the case law.

The legal treatment of the consent of young persons to sexual acts was also changed by the 1983 amendments to the *Criminal Code*. Section 246.1(2) of the *Criminal Code* now provides:

> 246.1(2) Where an accused is charged with an offence under subsection (1) or section 246.2 or 246.3 in respect of a person under the age of fourteen years, it is not a defence that the complainant consented to the activity that forms the subject matter of the charge unless the accused is less than three years older than the complainant.

Accordingly, where a complainant is under 14, is capable of and does give a *de facto* consent to sexual activity with a person more than three years older, the young person's consent is nevertheless not a defence to the accused with respect to any of the "sexual assault" offences.

Where, however, the accused is less than three years older than the complainant, the complainant's consent to the sexual act is recognized by the law and serves to exonerate the accused. In addition, a capable person under 14 apparently may give a valid legal consent not only to being sexually touched by a person less than three years older, but also to being threatened, harmed, wounded, maimed or disfigured by that person. The applicability of this "less than three years older" defence to the more serious sexual assault offences in sections 246.2 and 246.3 can only be regarded in the Committee's judgment as a serious legislative oversight.

Although it is clear that at common law there are limits to the degree of physical harm to which a person may give a valid consent, where the line is to be drawn is unclear.[37] This problem arises most acutely in the context of sado-masochistic behaviour, in which the "assailant", for purposes of sexual gratification, visits some degree of violence on his or her willing partner. The leading

decision on the legal principles applicable to this form of conduct is the English case of *R. v. Donovan*,[38] in which the Court of Criminal Appeal held that, as a general rule, it is unlawful to beat another person with such a degree of violence that the infliction of bodily harm is a probable consequence, regardless of the consent of the complainant, and that sado-masochistic behaviour does not fall within any of the well-established exceptions to this rule. "Bodily harm" in this context should be taken to mean any hurt or injury calculated to interfere with the health or comfort of the complainant. The hurt or injury need not be permanent, but must be more than merely transient and trifling. These principles have been explicitly adopted by the Ontario Court of Appeal[39] and by the Supreme Court of Canada,[40] and more recently, have been acknowledged by the Quebec Court of Appeal.[41] They conflict with the statutory defence which now may be available where a capable person under 14 consents to a harmful sexual touching.[42]

An implied element in the sexual assault offence is that the accused, in committing a sexual assault, either knew that the complainant did not consent, or was reckless or indifferent to whether he or she consented. A situation may arise (albeit rarely, in light of the Committee's findings) in which an accused honestly believes that a complainant is consenting to the sexual act, while the latter is in fact withholding consent. Section 244(4) of the *Criminal Code* provides:

> 244. (4) Where an accused alleges that he believed that the complainant consented to the conduct that is the subject-matter of the charge, a judge, if satisfied that there is sufficient evidence and that, if believed by the jury, the evidence would constitute a defence, shall instruct the jury, when reviewing all the evidence relating to the determination of the honesty of the accused's belief, to consider the presence or absence of reasonable grounds for that belief.

This provision makes it clear that the accused's defence of honest belief in the complainant's consent must, pragmatically if not theoretically, have some objective basis in fact and obliges the trial judge to charge the jury accordingly.

Indecent Assault on a Female

The former offence of indecent assault on a female was repealed in January, 1983 and was replaced by sexual assault offences which do not require corroboration. Under the former section 149(1) of the *Criminal Code*, "every one who indecently assaults a female person is guilty of an indictable offence and is liable to imprisonment for five years." An indecent assault was an assault with an element of indecency and, accordingly, the offence of indecent assault on a female was committed where a person touched, attempted or threatened to touch a female person indecently and without her consent, or with her "consent" if it was obtained by false and fraudulent representations as to the nature and quality of the act. The consent of a female under 14 to the act for which the accused was charged was no defence.[43]

The legal concept of an "assault" causes difficulty where an accused invites a child to touch him, but neither touches nor threatens to touch the child in return. In these circumstances, English and Canadian courts have held that, since there is no assault, the question of indecent assault does not arise. In *Fairclough v. Whipp*[44], the accused was urinating by a river bank where four girls, varying in age from six to nine, were playing. As one of the girls passed him, he turned to her with his penis exposed and said, "Touch it." The girl did so, after which the accused departed. On his trial for indecent assault, the accused was acquitted. The English court reasoned:[45]

> An assault can be constituted, without there being a battery, for instance, by a threatening gesture or a threat to use violence against a person, but [there is no authority] which says that where one person invites another person to touch him that can be said to be an assault. The question of consent or non-consent only arises if there is something which can be called an assault and, without consent, would be an assault.

The reasoning employed in *Fairclough v. Whipp*[46], namely, that an invitation to someone to touch the invitor cannot, by itself, amount to an assault, has been adopted by Canadian courts. In *R. v. McCallum,*[47] the male accused was charged with indecent assault on a female. He had appeared nude before a young girl and had invited her to masturbate him, which she apparently did. The court held that where an accused merely invites another person to touch his private parts, but does not himself touch that person or threaten him or her by acts or gestures, there is no *assault* and therefore no *indecent* assault.[48] It is apparent that in these sorts of cases, the legal concept of an "assault" fails to provide an effective framework for sanctioning inappropriate sexual conduct between adults and children.[49]

The offence of indecent assault on a female was introduced into Canadian law in 1869,[50] substantially duplicating English legislation enacted eight years earlier.[51] It shared the same section as the offence of attempted carnal knowledge of a girl under 12; both offences carried a punishment of imprisonment for any term less than two years, with or without hard labour or whipping. The provision for "hard labour" was removed in 1886.[52]

Several significant changes were introduced in 1890.[53] The offences of indecent assault on a female and unlawful carnal knowledge were given separate sections, and the penalty for each was increased to a maximum of two years' imprisonment, thereby rendering the offender liable to be imprisoned in a federal penitentiary.[54] It was further enacted that a "child of tender years" could give evidence with respect to the offences of indecent assault on a female and unlawful carnal knowledge, notwithstanding that it was not given upon oath, if the child was "possessed of sufficient intelligence to justify the reception of the evidence" and understood "the duty of speaking the truth".[55] Under the common law, it had been established in the late eighteenth century that no testimony could legally be received except upon oath.[56] This statutory amendment rendered admissible testimony of children that would otherwise have been inadmissible. It was unquestionably motivated by a recognition that disallowing young girls to testify because they did not understand the nature of an oath

would effectively deny them much of the protection the substantive criminal law sought to afford. As a counter-balancing measure, it was further provided that evidence thus admitted had to be corroborated by evidence implicating the accused.[57]

Another amendment aimed directly at providing additional protection for children was enacted in 1890. The amendment provided that "it is no defence to a charge or indictment for any indecent assault on a young person under the age of 14 years to prove that he or she consented to the act of indecency",[58] and complemented the increased protection from sexual intercourse that was afforded in the same enactment to girls under the age of 14.[59]

In the 1892 *Criminal Code*, the offence of indecent assault on a female was widened to proscribe acts where the female's consent was obtained by false and fraudulent representations as to the nature and quality of the act.[60] No significant changes in this offence occurred between 1892 and the 1955 *Criminal Code* revision.

Prior to 1955, it had been authoritatively held that there was no legal requirement for corroboration in cases of indecent assault.[61] Even so, and especially with respect to the sworn evidence of children in sexual cases, the caveat that it was unsafe to convict on the uncorroborated evidence of the complainant applied.[62] As part of the 1955 *Criminal Code* revision, the common law rule of practice that it was unsafe for the jury to find the accused guilty on the basis of the complainant's uncorroborated testimony, but that they were entitled to do so if satisfied beyond a reasonable doubt that it was true, was codified and made applicable to the offence of indecent assault.[63] This provision was repealed in 1976;[64] under the present law, the judge is prohibited from instructing the jury that it is unsafe to find the accused guilty in the absence of corroboration.[65]

The maximum term of imprisonment for the offence of indecent assault was raised in 1955 from two years to five years and the provision for whipping retained.[66] The whipping provision was repealed effective July 15, 1972, as part of the abolition of corporal punishment of male criminal offenders.[67] (The sexual assault offences which replaced this offence have already been described).

Indecent Assault on a Male

Section 156 of the *Criminal Code*, which contained the former offence of indecent assault on a male, was repealed in January, 1983 and was replaced by sexual assault offences. Under the former section 156 "every male person who assaults another person with intent to commit buggery or who indecently assaults another male person is guilty of an indictable offence and is liable to imprisonment for 10 years". This section created two distinct offences: assault with intent to commit buggery and indecent assault on a male. With respect to the former, although the term "buggery" is not defined in the *Code*, it is taken to mean sexual intercourse *per anum* by a man with a man or a woman. The completed act of buggery is a separate offence.[68]

The offence of indecent assault on a male was formerly the only exclusively homosexual offence in Canadian criminal law. An indecent assault was an assault with an element of indecency and, accordingly, the offence of indecent assault on a male was committed where a male person touched, attempted or threatened to touch another male person indecently and without the latter's consent. The consent of a person under 14 was not a defence to either of the offences in section 156.

The offence of assault with intent to commit buggery existed in pre-Confederation criminal law[69] and, together with the offences of attempted buggery and indecent assault on a male, first appeared as a federal criminal offence in 1869, with a maximum punishment of 10 years' imprisonment with or without hard labour.[70] These offences were enacted in somewhat different form in 1886, the offence of indecent assault male being limited to assaults by males on other males, and the offence of assault with intent to commit buggery being clarified as applying either to male or to female victims.[71]

In 1890, an amendment aimed directly at providing additional protection for children was enacted. The amendment provided that "it is no defence to a charge or indictment for any indecent assault on a young person under the age of 14 years to prove that he or she consented to the act of indecency."[72] This provision complemented the increased protection from sexual intercourse that was afforded in the same enactment to girls under the age of 14.[73]

In 1892, a provision for whipping the offender was added.[74] The offences of indecent assault on a male and assault with intent to commit buggery remained essentially unchanged until 1972, when the provision for whipping male offenders was repealed as part of the abolition of corporal punishment of male criminal offenders effective July 15, 1972.[75] (The sexual assault offences which replaced these offences have already been described).

Buggery and Bestiality

The *Criminal Code* provides that "every one who commits buggery or bestiality is guilty of an indictable offence and is liable to imprisonment for 14 years".[76] Neither "buggery" nor "bestiality" is defined in the *Criminal Code*, and resort must be had to their meanings at common law. "Buggery" is sexual intercourse by a male person *per anum* of another person, either male or female.[77] "Bestiality" is sexual intercourse in any manner with an animal.[78]

In 1969, important amendments which effectively de-criminalized consensual sexual behaviour between two consenting adults were introduced into Canadian criminal law.[79] Section 158 of the *Criminal Code* provides that the offences in section 155 (buggery) and section 157 (gross indecency) do not apply to any consensual act committed in private between a husband and his wife, or any two persons, each of whom is 21 or older. The section further provides, however, that this defence does not apply where more than two persons take part or are present or where the act occurs in a public place.[80] Moreover, a

person is deemed not to consent if the consent is obtained by force or fraud, or if that person is, and the other party knows or has good reason to believe that that person is feeble-minded or insane.[81]

The historical basis of the offences of buggery and bestiality at common law was the biblical injunction against participating in the "abominable" sexual practices reviled in the Old Testament.[82] The common law of England was vehement in its condemnation of both these crimes;[83] this vehemence was amply reflected in the laws of the provinces of British North America prior to Confederation. The Provinces of New Brunswick[84] and Canada[85] prescribed the death penalty for acts of buggery or bestiality, and the maximum penalty in Nova Scotia was set at life imprisonment, with a minimum term of imprisonment of at least seven years.[86]

The first post-Confederation enactment concerning these acts provided that "whosoever is convicted of the abominable crime of buggery committed either with mankind or with an animal, shall be liable to be imprisoned in the Penitentiary for life, or for any term not less than two years".[87] The minimum term of imprisonment for two years was dropped in 1886[88] and the offence remained substantially unchanged in the 1892 *Criminal Code*.[89] Two changes were effected in the 1955 *Criminal Code* revision:

1. The crime was stated simply to be "buggery or bestiality", the former term referring to sexual intercourse *per anum* between two human beings and the latter to sexual intercourse in any manner with an animal.

2. The punishment was reduced from a maximum of life imprisonment to a maximum of imprisonment for 14 years.[90]

The changes introduced in 1969 have already been described.

Incest

Section 150 of the *Criminal Code* provides that the offence of incest is committed when a person, knowing that another is by blood relationship his or her parent, child, brother, half-brother, sister, half-sister, grandparent, or grandchild, has sexual intercourse with that person.[91] Although both parties to the act of sexual intercourse are technically guilty of the offence, the law provides that, where a female person is convicted under this section and the court is satisfied that she participated in the act of sexual intercourse under restraint, duress or fear of the male person, the court is not required to impose any punishment upon her.[92] Section 147 of the *Criminal Code* states that no male person shall be deemed to commit incest while he is under the age of 14 years. The maximum punishment upon conviction for incest is imprisonment for 14 years.[93]

Although incest was never considered a crime at common law, it attracted the interest of legislators in England more than two and a half centuries before

the eventual passage in that country of the *Punishment of Incest Act*, 1908.[94] According to Hogan:[95]

> It is generally assumed that incest was first made a crime by Parliament in the Punishment of Incest Act of 1908. In fact a statute was passed in 1650 during the Interregnum for "suppressing the abominable and crying sins of Incest, Adultery and Fornication" and the Act made incest a felony punishable by death without benefit of clergy. Before that the punishment of incest lay with the ecclesiastical courts and no doubt it was the abolition of these courts under the Commonwealth which led to the Act of 1650. The Act lapsed on the Restoration and the punishment of incest was restored to the ecclesiastical courts.

In any event, the Canadian legislative experience concerning incest differs markedly from the English. Prior to Confederation, the Provinces of Prince Edward Island, New Brunswick and Nova Scotia enacted laws dealing specifically with incest. In 1854, the Province of New Brunswick enacted a statute making incest an offence carrying a maximum punishment of imprisonment for 14 years.[96] In 1861 and 1864, the Provinces of Prince Edward Island and Nova Scotia also enacted legislation making incest a criminal offence, carrying maximum punishments of imprisonment for 21 years[97] and two years[98] respectively. These statutes remained in force in these three provinces even after Confederation, since the authority to repeal pre-existing provincial criminal legislation was vested in 1867 in the federal Parliament.[99] No federal legislation was enacted to repeal them in the period between Confederation and the first appearance of incest as a federal criminal offence in 1890.[100]

In 1890, as part of the post-Confederation process of consolidating Canadian criminal laws, the federal Parliament enacted a statute making incest an offence.[101] The specified prohibited degrees of consanguinity were those of parent, child, brother, sister, grandparent and grandchild. The maximum punishment was set at 14 years' imprisonment, with male offenders also liable to be whipped. It was further provided that, "if the court or judge is of opinion that the female accused was a party to such intercourse only by reason of the restraint, fear or duress of the other party, the court or judge shall not be bound to impose any punishment on such person under this section."[102]

The identical section was re-introduced in the 1892 *Criminal Code*.[103] No important statutory changes occurred in the offence of incest until 1934, when half-siblings were added to the list of prohibited degrees of consanguinity.[104] In the 1955 revision of the *Criminal Code*, two significant amendments were introduced. The 1890 and subsequent statutory definitions of incest provided that persons within the prohibited degrees "*who cohabit or* have sexual intercourse with each other" shall be guilty of incest. The word "cohabit" was removed from the section, there being some differences of judicial opinion whether the word "cohabit" in this context meant the same as "have sexual intercourse with".[105]

An even more significant change concerned whether the accused could be convicted of incest on the uncorroborated testimony of one witness. Prior to

1955, the offence of incest could be so proven.[106] With the 1955 *Criminal Code* revision, however, incest was added to the list of offences requiring corroboration as a matter of law,[107] apparently due to a perceived danger of false or vexatious allegations being brought.[108] The statutory requirement for corroboration in cases of incest was removed in January, 1983.[109]

In 1972, the additional punishment of whipping male offenders (a punishment for which male incest offenders had been liable since 1890) was removed as part of the general abolition of corporal punishment of male criminal offenders.[110]

Consensual Sexual Touching

As noted, several offences listed in the preceding section (sexual assaults, indecent assaults, buggery and incest) may also be included here, depending upon the nature of the conduct involved in a complaint.

Sexual Intercourse with a Step-Daughter, Foster Daughter or Female Ward

Section 153(1)(a) of the *Criminal Code* provides that every male person who has illicit sexual intercourse with his step-daughter,[111] foster daughter or female ward is guilty of an indictable offence and is liable to imprisonment for two years.

This offence was first introduced into Canadian criminal law in 1890, although in a somewhat narrower form.[112] The 1890 provision stated that "every one who, being a guardian, seduces or has illicit connection with his ward . . . is guilty of a misdemeanor and liable to two years' imprisonment." This offence was later incorporated into the 1892 *Criminal Code*.[113]

In 1900, the term "guardian" was widened to include "any person who has in law or in fact the custody or control of the girl or child."[114] The scope of this offence was widened again in 1917, when the guardian/ward relationship was extended to include the relationships of step-parent/step-child and foster parent/foster child.[115] Until 1955, the section 153(1)(a) offence applied to sexual intercourse between persons of either sex who were legally related in the manner specified. In the 1955 *Criminal Code* revision, the section was amended so as to apply only to a male offender who had sexual intercourse with his step-daughter, foster daughter or female ward.[116] The statutory requirement for corroboration in prosecutions under section 153(1)(a) was removed in January, 1983.[117]

Sexual Intercourse by an Employer with a Female Employee under 21 Years of Age

Section 153(1)(b) provides that it is an indictable offence, punishable by a term of imprisonment of up to two years, for a male person to have illicit sex-

ual intercourse with a female under 21 and "of previously chaste character" with whom he stands in an employer-employee relationship.

The section 153(1)(b) offence was first introduced into Canadian criminal law in 1890, although in a much narrower form.[118] The 1890 provision stated that "every one who seduces or has illicit connection with any woman or girl of previously chaste character and under the age of 21 years who is in his employment in a factory, mill or workshop, or who, being in a common employment with him, in such factory, mill or workshop, under, or in any way subject to, his control or direction, is guilty of a misdemeanor and liable to two years' imprisonment." This offence was later incorporated into the 1892 *Criminal Code,*[119] with a provision being added that an accused could not be convicted of illicit sexual intercourse with a female employee if he subsequently married her.[120] In 1900, the section was amended to provide that the burden of proving the female employee's previous unchastity was on the accused.[121] This provision was repealed in January, 1983.

Section 153(1)(b) was extended in 1920 to include all forms of employment.[122] The amendments further provided that the accused might be acquitted if he was found not to be wholly or chiefly to blame for the act of sexual intercourse which took place,[123] and that evidence of previous sexual intercourse between the accused and the female employee could not be used to show that she was not of previously chaste character.[124] The latter evidentiary provision was repealed in January, 1983. The "lack of blameworthiness" defence was widened in 1959. The accused henceforth might be acquitted if the evidence did not show that he was "more to blame", rather than "wholly or chiefly to blame".[125] The requirement of corroboration was removed in January, 1983 by the repeal of the former section 139(1) of the *Criminal Code.*

Sexual Intercourse with a Female under the Age of 14 and Sexual Intercourse with a Female who is 14 or 15 Years of Age

Section 146(1) of the *Criminal Code* makes it an offence, punishable by a maximum sentence of life imprisonment, for a male person to have sexual intercourse with a female person who is not his wife and who is under the age of 14 years. The consent of the female to the sexual intercourse is not a defence to the charge,[126] nor is the fact that the accused believed she was 14 years of age or older.

Section 146(2) of the *Code* makes it an offence, punishable by a maximum sentence of five years' imprisonment, for a male person to have sexual intercourse with a female who is not his wife, is 14 or 15 years of age, and is of "previously chaste character," regardless of whether he believes that she is 16 years of age or older. In this event, however, the court may find the accused not guilty if the evidence does not show that the accused was more to blame than the female person for the behaviour which led to the charge.[127] Section 147 of

the *Criminal Code* states that no male person shall be deemed to commit an offence under section 146 while he is under the age of 14 years.

The statutory proscription of sexual intercourse with young females, regardless of their consent to the sexual intercourse,[128] has a long history in Canada. Prior to Confederation, a number of colonial statutes were passed which bolstered the legal protection of young girls from premature sexual intercourse that was provided under imperial statutes applicable to British North America. In 1758, the Nova Scotia Assembly enacted a statute making it a capital felony to have sexual intercourse with a girl under 12 years of age.[129] This protection later took the form of two distinct offences: sexual intercourse with a girl under the age of 10, punishable by life imprisonment,[130] and sexual intercourse with a girl of 10 or 11 years of age, punishable by a term of imprisonment not exceeding seven years.[131] The Province of Canada prescribed the death penalty for males having sexual intercourse with girls under the age of 10,[132] and made it a misdemeanor to have sexual intercourse with a girl aged 10 or 11, the punishment for such offence being left to the discretion of the court.[133] A comparable statutory scheme concerning girls under the age of 10 and of 10 or 11 years of age was also in force in New Brunswick prior to Confederation.[134]

Upon Confederation in 1867, the authority to enact laws in relation to criminal law and procedure was conferred on the federal Parliament[135] and the process of making criminal law and procedure uniform throughout Canada began shortly thereafter. In 1869, it was made a federal criminal offence, punishable by death, to have sexual intercourse with a girl under the age of 10.[136] Sexual intercourse with a girl aged 10 or 11 was made a distinct offence carrying a maximum punishment of seven years' imprisonment,[137] as was an attempt to have sexual intercourse with a girl under the age of 12, which carried a punishment of imprisonment for any term of less than two years, with or without hard labour or whipping.[138] The punishment for having sexual intercourse with a girl under the age of 10 was reduced in 1877 from death to a term of imprisonment for life or for any term not less than five years.[139]

In 1886, statutory protection was also afforded against any person who "seduces and has illicit connection with any girl of previously chaste character, or who attempts to have illicit connection with any girl of previously chaste character, being in either case of or above the age of 12 years and under the age of 16 years,"[140] with a maximum punishment of two years' imprisonment. This qualified form of protection concerning girls between 12 and 16 was reformulated in 1890. The seduction offence was made to apply to girls between 14 and 16,[141] whereas the "unlawful sexual intercourse" provisions, which previously had applied only to girls under the age of 12, were extended to provide protection against sexual intercourse for girls under the age of 14.[142]

The 1892 *Criminal Code*[143] retained the offence of seduction of a girl of previously chaste character between 14 and 16,[144] and further extended the

protection for girls under 14 by making the accused's belief concerning the girl's age irrelevant to the charge. Sections 269 and 270 of the 1892 *Criminal Code* provided:

> 269. Every one is guilty of an indictable offence and liable to imprisonment for life, and to be whipped, who carnally knows any girl under the age of 14 years, not being his wife, whether he believes her to be of or above that age or not.
>
> 270. Every one who attempts to have unlawful carnal knowledge of any girl under the age of 14 years is guilty of an indictable offence and liable to two years' imprisonment, and to be whipped.

In 1893, the offence of "seducing *and* having illicit connection with" girls of previously chaste character between the ages of 14 and 16 was widened to proscribe "seducing *or* having illicit connection with" such girls,[145] rendering proof of seduction unnecessary and hence providing additional protection to girls within this age group.[146]

Another reformulation of this offence occurred in 1920, when the "seduction" offence was made applicable to girls between the ages of 16 and 18, while the "unlawful sexual intercourse" provision (for which seduction need not be proved) concerning girls of previously chaste character between the ages of 14 and 16 was retained, with the maximum punishment increased from two to five years. With respect to this latter offence, the jury might acquit the accused if the evidence did not show that the accused was "wholly or chiefly to blame."[147] This provision was replaced in 1959 by the phrase "more to blame than the female person",[148] to improve statutory clarity.[149] In 1934, it was provided that sexual intercourse by the accused with the girl on a prior occasion shall be deemed not to be evidence that she was not of previously chaste character.[150] The requirement that the accused carry the burden of proving that the female person was not of previously chaste character was made applicable to the section 146(2) offence in the 1955 revision of the *Criminal Code*.[151] The January, 1983 repeal of former section 139 of the *Criminal Code* included the latter two provisions.

Prior to the 1955 *Criminal Code* revision, the offences of unlawful sexual intercourse with a girl under 14, or with a girl aged 14 or 15, required corroboration of the complainant's evidence before a conviction could be entered.[152] As part of the 1955 revision, the common law rule of practice that it was unsafe for the jury to find the accused guilty on the basis of the complainant's uncorroborated testimony, but that they were entitled to do so if satisfied beyond a reasonable doubt that her evidence was true, was codified and made applicable to the unlawful sexual intercourse offences.[153] This provision was repealed in 1976;[154] under the current law, the unsworn testimony of a child is subject to the requirement of corroboration.[155]

With respect to the punishment for which the accused is liable upon being convicted of this offence, although whipping was traditionally available as a punishment for the offence of unlawful sexual intercourse with a female under

the age of 14, corporal punishment for this and all other offences was abolished in Canada effective July 15, 1972.[156]

Sexual Intercourse with a Feeble-Minded Female

The offence of having sexual intercourse with a feeble-minded female was repealed in January, 1983. The former section 148 of the Criminal Code made it an indictable offence, punishable by imprisonment for up to five years, for any male person who, under circumstances that did not amount to rape, had sexual intercourse with a female person who was not his wife and who was, or whom he knew or had good reason to believe was, feeble-minded, insane or was an idiot or imbecile. In this context, "feeble-minded person" meant a person "in whom there exists and has existed from birth or from an early age, mental defectiveness not amounting to imbecility, but so pronounced that he requires care, supervision and control for his protection or for the protection of others."[157]

Although there have been very few reported decisions concerning this offence, its basis appeared to be the combination of the female person's defective mental capacity and the male person's appreciation of and unscrupulous disregard of this fact, culminating in sexual intercourse.[158] The offence envisaged a situation in which a female person, although of defective mental capacity, was capable of giving and did give her consent to sexual intercourse. In order to discourage exploitive sexual behaviour of this kind, the male was made culpable, notwithstanding that the woman so afflicted apparently consented to the sexual intercourse. A female who was under one of the incapacities outlined in section 148 could, however, give a valid consent to what would otherwise have been an indecent assault: it was sexual intercourse in these circumstances that section 148 was directed at. Where the female person's mental defectiveness was such as to render her incapable of giving a valid consent to sexual intercourse, the offence of rape was the more appropriate charge.[159]

The offence of having sexual intercourse with a feeble-minded female first appeared in Canadian criminal law in 1886[160] and was modelled on English legislation enacted in the previous year.[161] A punishment of up to two years' imprisonment was prescribed for every one who "unlawfully and carnally knows or attempts to have unlawful carnal knowledge of any female idiot or imbecile woman or girl, under circumstances which do not amount to rape, but which prove that the offender knew at the time of the offence that the woman or girl was an idiot or imbecile."[162] The section was amended in 1887 to include sexual intercourse with females who were insane[163] and, in the 1892 *Criminal Code*, the offence was also made applicable to women who were deaf and dumb with the penalty being raised to four years' imprisonment.[164]

In 1900, additional legislative protection was afforded against this form of exploitation. The requirement that the accused know of the female person's incapacity was modified, so that henceforth the prosecution needed only to

prove that the accused had good reason to believe that the female was mentally infirm.[165] The category of females who were "feeble-minded" was added to this section in 1927, thus enlarging its scope.[166]

The 1955 *Criminal Code* revision effected three changes to this offence:[167]

1. The proscription against sexual intercourse with females who were deaf and dumb was removed.[168]
2. The offence was made inapplicable to acts of sexual intercourse between an accused and his wife.
3. The maximum punishment was raised from four to five years' imprisonment.

Section 139(1) of the *Criminal Code*, which formerly provided that no accused could be convicted of the section 148 offence upon the evidence of only one witness unless the evidence of that witness was corroborated in a material particular by evidence that implicated the accused, was repealed in January, 1983.

Seduction of a Female Who is 16 or 17 Years of Age

Section 151 of the *Criminal Code* makes it an indictable offence, punishable by imprisonment for up to two years, for any male person of 18 years of age or more to seduce a female person of previously chaste character who is 16 years or more but fewer than 18 years of age. "Seduction" in this context connotes something more than inducing a woman to have sexual intercourse;[169] it involves as a further element "the surrender by a woman of her chastity to a man as the result of his persuasion, solicitation, promises, bribes or other means without the employment of force."[170] The "surrender of a woman's chastity" contemplated by this section is nonetheless a consensual one. Where the complainant does not consent, a charge of sexual assault is more appropriate.[171]

The seduction offence in section 151 of the *Criminal Code* had its origin in an 1886 enactment which proscribed the seduction of girls of previously chaste character between the ages of 12 and 16.[172] The age group to which this offence applied was increased in 1890 to girls 14 and 15,[173] and in 1920 to girls 16 and 17,[174] in order to provide a sanction against the seduction of young women whose ages put them just outside the protection afforded by the "unlawful sexual intercourse" offences, which since 1920 have applied to girls under 16.

In 1920, the section was amended to provide that proof of previous sexual intercourse between the parties was not to be considered evidence that the girl was not of previously chaste character, and that the jury might acquit, if in their view, the accused was not wholly or chiefly to blame.[175] This latter provision was removed in the 1955 *Criminal Code* revision,[176] as it was considered that a man who seduces a young woman of this age was necessarily culpable.[177]

The need for corroboration and the burden on the accused to prove the complainant was not of previously chaste character, which were requirements in the former sections 139(1) and (2) of the *Criminal Code*, were repealed in January, 1983.

Seduction under Promise of Marriage

Section 152 of the *Criminal Code* makes it an indictable offence, punishable by imprisonment for up to two years, for any male person 21 or older who, under promise of marriage, seduces an unmarried female person of previously chaste character who is less than 21 years of age.

The offence of seduction under promise of marriage was first introduced into Canadian criminal law in 1886[178] and was modelled on American state legislation,[179] there being no English precedent for this offence.[180] It originally applied only to girls under the age of 18, but was amended in 1887 by raising this age to 21.[181] The 1892 *Criminal Code* included a provision that the subsequent marriage of the parties was a complete defence to the charge.[182] This provision was deleted when the former section 139(2) of the *Criminal Code* was repealed in January, 1983. The need for corroboration and the burden on the accused to prove the complainant was not of previously chaste character, which were requirements in the former sections 139(1) and (2) of the *Criminal Code*, were also repealed in January, 1983.

Parent or Guardian Procuring Defilement

Section 166 of the *Criminal Code* makes it an offence for a parent or guardian of a female person to procure her to have illicit sexual intercourse with another person or knowingly to receive the avails of her seduction, defilement or prostitution. This offence is punishable by imprisonment for 14 years, if the female person is under 14, or by imprisonment for five years, if she is age 14 or older.

The offence of procuring, by false pretences, a female under 21 to have illicit sexual intercourse first appeared in Canadian criminal law in 1869;[183] it was on this offence that the more specific prohibition directed at parents and guardians was based. In 1890, the offence relating to a parent or guardian of a female person who procures her defilement was enacted, with the penalty being made contingent on whether the female in question was under 14 or 14 or older.[184] In 1892, it was provided that no person accused of this offence shall be convicted on the evidence of one witness unless that witness was corroborated in a material particular by evidence implicating the accused.[185] This statutory corroboration requirement was repealed in January, 1983.

Other Sexual Behaviour

Gross Indecency

Section 157 of the *Criminal Code* provides that "every one who commits an act of gross indecency with another person is guilty of an indictable offence and is liable to imprisonment for five years". The phrase "act of gross indecency" has never been defined by statute. Although it was originally limited to homosexual male behaviour, it now refers to an ill-defined range of homosexual and heterosexual behaviours variously involving adults, adolescents or children, depending on the circumstances.

The offence of gross indecency first appeared in Canadian law in 1890,[186] and was modelled on an English statute enacted five years earlier.[187] It was apparently intended to proscribe homosexual male behaviours such as fellatio and mutual masturbation, which were not crimes at common law.[188] The offence could only be committed by a male with another male; it was irrelevant whether the act occurred in public or in private. A comparable provision was included in the 1892 *Criminal Code*.[189]

An examination of the parliamentary debates upon the introduction of the "gross indecency" offence in 1890 and upon its reintroduction into the 1892 *Criminal Code* suggests that the legislators who supported the provision had little idea what range of behaviours would be proscribed by it,[190] apart from its applicability to homosexual male behaviour generally. In any event, the offender was liable to five years' imprisonment or to be whipped. Under the original English statute, the punishment was limited to imprisonment for any term not exceeding two years.

The offence remained unchanged from 1892 until the 1955 *Criminal Code* revision, when it was widened to apply to acts committed by or between persons of either sex. At the same time, the provision for whipping as an additional punishment was dropped.[191] The 1969 amendments to the *Code*, which effectively de-criminalized private sexual behaviour between two consenting adults, have already been described under "Buggery and Bestiality." Corroboration is not required in prosecutions for gross indecency.[192]

Indecent Act

Section 169 of the *Criminal Code* provides that it is a criminal offence wilfully to do an indecent act in a public place in the presence of one or more persons, or in any place with intent to insult or offend any person. A public place is expressed as including any place to which the public has access as of right or by invitation, express or implied.[193] The *Criminal Code* does not define the term "indecent act" and, while this offence typically refers to acts of male exposure, it subsumes also a variety of inappropriate behaviours from profaning a religious ceremony to masturbating in a window or "streaking" in public.

Where the act is done in a public place, the mere wilful doing of the act is an offence, regardless of whether the person intends to insult or offend any individual present. Where, however, the act is done in a place other than a public place, the person's intent to insult or offend another person is an element of the offence.[194] The offence of indecent act is punishable on summary conviction, the offender being liable to a fine of not more than $500 or to imprisonment for six months, or to both.[195]

Although the offence of outraging public decency (of which the public exposure by a male of his genitals was the most common instance) had been a common law misdemeanour in England since the seventeenth century,[196] in 1822, the English Parliament enacted a statute on "vagrancy" which specifically proscribed acts of indecent exposure.[197] It was from this statute that the first Canadian legislation on this topic derived.

In 1869, the Canadian Parliament enacted a comparable statutory scheme dealing with the apparently widespread problem of "vagrancy". A vagrant was defined in remarkably broad terms as including all idle persons not having visible means of support, all common prostitutes and keepers or patrons of bawdy-houses or houses of ill-fame who could not give a satisfactory account of themselves, all persons who lived primarily by gaming or crime or on the avails of prostitution, and "all persons openly exposing or exhibiting in any street, road, public place or highway any indecent exhibition, *or openly or indecently exposing their persons*".[198] A person found to be a vagrant was liable to imprisonment for a term not exceeding two months, with or without hard labour, or to a fine not exceeding $50, or to both. In 1874, the maximum term of imprisonment for this offence was increased to imprisonment for six months,[199] and in 1881 it was made clear that this term of imprisonment could be imposed with or without hard labour.[200] In 1886, the vagrancy provisions were incorporated into the omnibus statute entitled *An Act respecting Offences against Public Morals and Public Convenience*,[201] but were not changed in substance.

A legal re-classification of exhibitionistic behaviour occurred in 1890.[202] The offender's act of indecent exposure in a public place, rather than his status as a vagrant, constituted the offence.[203] More changes were introduced two years later. In the 1892 *Criminal Code*, the phrase "wilfully commits any indecent exposure of the person" was replaced with the more general provision, "wilfully . . . does any indecent act", and another section was added which proscribed indecent acts calculated to insult or offend any person present, regardless of where the act took place.[204] The offence as defined in the 1892 *Criminal Code* remained unchanged until the 1955 *Criminal Code* revision, when the concept of "public place" was clarified[205] and the allowable fine for this offence was increased from $50 to $500, as part of the standardization of penalties for summary conviction offences.[206]

Contributing to Juvenile Delinquency

When the *Juvenile Delinquents Act*[207] was repealed and replaced in April, 1984 by the *Young Offenders Act*,[208] the offences of "juvenile delinquency" and "contributing to juvenile delinquency" ceased to exist in Canadian law.

Section 33(1) of the *Juvenile Delinquents Act* provided:

> 33 (1) Any person, whether the parent or guardian of the child or not, who, knowingly or wilfully,
>
> (a) aids, causes, abets or connives at the commission by a child of a delinquency, or
>
> (b) does any act producing, promoting, or contributing to a child's being or becoming a juvenile delinquent or likely to make any child a juvenile delinquent,
>
> is liable on summary conviction before a juvenile court or a magistrate to a fine not exceeding five hundred dollars or to imprisonment for a period not exceeding two years, or to both.
>
> (4) It shall not be a valid defence to a prosecution under this section either that the child is of too tender years to understand or appreciate the nature or effect of the conduct of the accused, or that notwithstanding the conduct of the accused the child did not in fact become a juvenile delinquent.

Section 2(1) of the *Juvenile Delinquents Act* stated that a "child" meant "any boy or girl apparently under the age of 16 years, or such other age as may be directed in any province pursuant to subsection (2)". Subsection (2) specified under age 18. Accordingly, the age below which a person was a "child" for the purposes of the application of the Act varied among the provinces: in Manitoba and Quebec, a "child" meant a person under 18; in British Columbia and Newfoundland, a "child" meant a person under 17; and everywhere else in Canada, a "child" meant a person under 16.

A child was considered a "juvenile delinquent" if he or she "violates any provision of the *Criminal Code* or of any federal or provincial statute, or of any by-law or ordinance of any municipality, or *who is guilty of sexual immorality or any similar form of vice*, or who is liable by reason of any other act to be committed to an industrial school or juvenile reformatory under any federal or provincial statute".[209] Accordingly, a person "contributes to juvenile delinquency" by behaving in a manner that does or is likely to cause a child to become a juvenile delinquent, for example, by causing the child to engage in or be exposed to "sexual immorality or any similar form of vice." The term "sexual immorality or any similar form of vice" was sufficiently vague to cover any number of sexual behaviours and to allow for disagreements of judicial opinion.

The offence of contributing to juvenile delinquency had been part of the *Juvenile Delinquents Act* since the Act was first passed in 1908.[210] It originally carried a maximum penalty of a fine not exceeding $500 or imprisonment not exceeding one year, or both.[211] This was increased in 1924 to a fine not exceeding $500, or imprisonment not exceeding two years, or both.[212] In 1936, a provision was added which prevented the accused from pleading either that the child was too young to understand the nature of the accused's conduct, or that

notwithstanding such conduct, the child did not in fact become a juvenile delinquent.[213] It served to emphasize that the offence of "contributing" was directed more at the accused's inappropriate conduct than at the arguable consequences of that conduct for the child.

Judicial decisions which stated that an accused could not contribute to the delinquency of a child who was already a delinquent appear to have conflicted with the obvious policy of section 33(4).[214] The offence of contributing to juvenile delinquency remained substantially unchanged between 1936 and the repeal of this legislation in April, 1984.

The philosophy underlying the *Juvenile Delinquents Act* was expressed in the following terms:[215]

> The modern Juvenile Court represents a socio-legal mechanism empowered to deal with juveniles in such a way as to divorce the treatment of children from the processes of law that have been created to deal with adult offenders. There is a statutory requirement that the Court have regard to the child's welfare. The juvenile is not convicted of a criminal offence and sentenced to punishment; instead he is adjudicated a delinquent and treatment is administered. In theory, the juvenile justice system is totally committed to rehabilitation and to "the best interests of the child."

This philosophy was increasingly challenged in recent years, and the debate over Canadian juvenile justice policy in the last decade culminated in the federal *Young Offenders Act*,[216] which repealed the *Juvenile Delinquents Act*. The *Young Offenders Act* sets out the following general principles:[217]

> 3 (1) It is hereby recognized and declared that
>
> (a) while young persons should not in all instances be held accountable in the same manner or suffer the same consequences for their behaviour as adults, young persons who commit offences should nonetheless bear responsibility for their contraventions and society must be afforded the necessary protection from illegal behaviour;
>
> (b) young persons who commit offences require supervision, discipline and control, but because of their state of dependency and level of development and maturity, they also have special needs and require guidance and assistance;
>
> (c) where it is not inconsistent with the protection of society, measures other than judicial proceedings under this Act should be considered for dealing with young persons who have committed offences;
>
> (d) young persons have rights and freedoms in their own right, including those stated in the Canadian Bill of Rights, and in particular a right to be heard in the course of, and to participate in, the processes that lead to decisions that affect them, and young persons should have special guarantees of their rights and freedoms;
>
> (e) in the application of this Act, the rights and freedoms of young persons include the right to the least possible interference with freedom, having regard to the protection of society, the needs of young persons and the interests of their families;

(f) young persons have the right, in every instance where they have rights or freedoms that may be affected by this Act, to be informed as to what those rights and freedoms are; and

(g) parents have responsibility for the care and supervision of their children, and, for that reason, young persons should be removed from parental supervision either partly or entirely only when all measures that provide for continuing parental supervision are inappropriate.

(2) This Act shall be liberally construed to the end that young persons will be dealt with in accordance with the principles set out in subsection (1).

Under the new scheme introduced in April, 1984, the age of criminal responsibility was raised from seven to 12 (young persons under 12 may, where appropriate, be dealt with pursuant to provincial law); the upper age limit of persons to whom the Act applies was made uniform at age 18 (those under 18 are dealt with under the *Young Offenders Act*, those 18 or older are dealt with under the adult criminal justice system); and the Act only applies to young persons who commit specific offences under federal law.

Use of Premises

Corrupting Children

Section 168 of the *Criminal Code* makes it an offence to participate, in the home of a child, in adultery or sexual immorality and thereby endanger the morals of the child or render the home of a child an unfit place for the child to be in. "Child" in this context means a person who is or who appears to be under the age of 18.[218] This offence is punishable by imprisonment for two years.

The *Criminal Code* imposes two procedural limitations on the charging of this offence. The first also applies to sections 151, 152, 153(1)(b), 166 and 167 of the *Code*, that is, that no proceedings for an offence under the section shall be commenced more than one year after the time when the offence was committed.[219] The second is that unless proceedings under this section are instituted by or at the instance of a recognized society for the protection of children or by an officer of a juvenile court, the consent of the Attorney General is necessary in order to charge a person with the offence.

What is now section 168 of the *Criminal Code* was first introduced into Canadian criminal law in 1918.[220] It provided that "any person who, in the home of a child, by indulgence in sexual immorality, in habitual drunkenness or in any other form of vice, causes such child to be in danger of being or becoming immoral, dissolute or criminal, or the morals of such child to be injuriously affected, or renders the home of such child an unfit place for such child to be in", was liable on summary conviction to a fine not exceeding $500, or to imprisonment for a term not exceeding one year, or to both. A "child"

was defined as a boy or girl apparently or actually under the age of 16 years; that the child was too young to understand or appreciate the nature of the "immoral" acts to which he or she was exposed was stated to be irrelevant to the charge.

In 1933, the offence was amended to read "every one who, in the home of a child, participates in adultery . . . ",[221] in consequence of a court decision which held that the mere fact of being adulterous in the home of a child was not sufficient to warrant a conviction under this section.[222] The amendment further provided that proof of adultery, sexual immorality or habitual drunkenness in the home of a child raised an irrebuttable legal presumption that the child's morals were thereby endangered. This statutory presumption was qualified two years later by inclusion of a provision that a common law relationship did not of itself endanger the morals of a child who was a product of that relationship.[223]

A number of changes to this offence were effected by the 1955 *Criminal Code* revision:

1. The irrebuttable legal presumption that a child's morals were endangered upon proof of the described conditions, was dropped.
2. The definition of "child" was amended to read, "a person who is or appears to be under the age of 18 years", in order to make it conform to the upper age-limit under the *Juvenile Delinquents Act*.
3. The offence was made indictable and the penalty increased to a term of imprisonment not exceeding two years.[224]

This offence has remained in its present form since 1955.

Owner, Occupier or Manager of Premises Permitting Defilement of a Female Person under 18 Years of Age

Section 167 of the *Criminal Code* makes it an offence knowingly to permit a female person under the age of 18 to use premises, of which one is the owner, occupier or manager, for the purpose of having illicit sexual intercourse with a particular male person or with male persons generally. A person convicted of this offence is liable to imprisonment for five years.

This offence first appeared in Canadian criminal law in 1886 and was modelled on English legislation enacted in the previous year.[225] The 1886 provision stated that "any person who, being the owner or occupier of any premises, or having, or acting, or assisting in the management or control thereof, induces, or knowingly suffers, any girl . . . to resort to or be in or upon such premises for the purpose of being unlawfully and carnally known by any man, whether such carnal knowledge is intended to be with any particular man or generally," was liable to imprisonment for 10 years if the girl was under 12, or to imprisonment for two years if the girl was 12 or older, but not yet 16.[226] It was further pro-

vided that, where the accused had reasonable cause to believe that the girl was 16 or older, such belief was a valid defence to the charge.[227]

A series of amendments in the ensuing 15 years increased the statutory protection from the forms of exploitation contemplated by this offence. In 1890, the punishment of 10 years' imprisonment was made applicable to offences involving girls under 14, whereas this penalty had previously applied only where girls under 12 were involved.[228] The 1892 *Criminal Code* adopted this provision, and repealed the statutory defence which previously had operated to exonerate an accused who reasonably believed the girl to be 16 or older.[229] In 1900, the upper age limit of girls protected by this section was raised from 16 to 18, with the penalties again depending on whether the girl was under 14, or between 14 and 18.[230]

The only significant changes in this offence since the turn of the century were effected in the 1955 revision of the *Criminal Code*. The maximum sentence for this offence was set at five years' imprisonment, eliminating the former penal distinction based on whether the girl in question was under 14, or 14 or older but not yet 18;[231] and the statutory requirement for corroboration of a sole witness's testimony, which had applied to this offence since 1892,[232] was removed.[233] The rationale was that, since this offence was a cognate form of the bawdy-house offences and since the latter did not require corroboration, corroboration in this context was similarly unnecessary.[234]

Vagrancy

Section 175(1)(e) of the *Criminal Code* provides that "every one commits vagrancy who, having been at any time convicted of an offence under a provision mentioned in paragraph 689(1)(a) or (b), is found loitering or wandering in or near a school ground, playground, public park or bathing area". A person convicted of this offence is punishable on summary conviction.[235]

This form of the vagrancy offence was introduced into Canadian criminal law in 1951[236] and was intended to provide a sanction against convicted sexual offenders found loitering in places frequented by children. Offenders previously convicted of (among other offences) rape, attempted rape, sexual intercourse with a female under 14, sexual intercourse with a female 14 or 15, indecent assault on a female or a male or gross indecency were subject to the prohibition.

Due, however, to a drafting error in the most recent re-enactment of this offence, the section 175(1)(e) provision cannot be charged, since the reference to "paragraph 689(1)(a) or (b)" fails to refer to any of the above offences. The necessary legislative amendments were not introduced in January, 1983.

Consent

The preceding classification of offences demonstrates the difficulty of arriving at any comprehensive statement of the role of consent in the major

sexual offences. Some of the current offences involving sexual touchings may be either non-consensual or consensual, depending upon the conduct complained of. Of these offences, those which mention consent do so in relation to age and the same is true of the offences involving consensual sexual touching.

The offences involving other sexual behaviour, which are not act-specific and which potentially include a wide range of sexual behaviour do not mention consent, but the exception to one of these offences does, in relation to age, and the exception also applies to an offence which involves a sexual touching and which may be either non-consensual or consensual.

The offences involving the use of premises do not mention consent, though age is an element in two of the offences.

The form of the offences and the exception provisions reflect different approaches over time as well as the need to accommodate the existing scheme of offences and defences. A brief case study of the former indecent assault

Table 12.2

Offences Involving Sexual Intercourse Where the Age of the Female is Not an Element

Criminal Code Offence	Effect of January, 1983 Amendments		
	Maximum Sentence	Offence Repealed	Offence Modified
Rape (formerly sections 143-145)	(formerly) life imprisonment	X	
Incest (section 150)	14 years' imprisonment		Corroboration no longer required.
Sexual Intercourse with Step-Daughter, Foster Daughter, or Female Ward (section 153(1)(a))	2 years' imprisonment		Corroboration no longer required.
Sexual Intercourse with Feeble-Minded Female (formerly section 148)	(formerly) 5 years' imprisonment	X	
Parent or Guardian Procuring Defilement (section 166)	14 years' if female is under 14		Corroboration no longer required.
	5 years' if female is 14 or older		

Table 12.3
Offences Involving Sexual Intercourse
Where the Age of the Female is an Element

Criminal Code Offence	Effect of January, 1983 Amendments		
	Maximum Sentence	Offence Unchanged	Offence Modified
Sexual Intercourse by Employer with Female Employee under 21 (section 153(1)(b))	2 years' imprisonment		Corroboration no longer required. Burden of proof and evidentiary presumption repealed. Defence of subsequent marriage repealed.
Sexual Intercourse with Female under 14 (section 146(1))	life imprisonment	X	
Sexual Intercourse with Female 14 or 15 (section 146(2)	5 years' imprisonment		Burden of proof provision and evidentiary presumption repealed.
Seduction of Female 16 or 17 (section 151)	2 years' imprisonment		Corroboration no longer required. Burden of proof provision and evidentiary presumption repealed.
Seduction of Female under 21 under Promise of Marriage (section 152)	2 years' imprisonment		Corroboration no longer required. Burden of proof provision repealed. Defence of subsequent marriage repealed.
Owner or Manager of Premises Permitting Defilement of Female under 18 (section 167)	5 years' imprisonment	X	

offences and the current sexual assault offences illustrates the importance of re-examining the question of consent, especially in relation to age, in the development of new sexual offences, as well as the problems which can result from including consensual as well as non-consensual conduct in the same offence.[237]

Section 140 of the *Criminal Code* provides that:

> Where an accused is charged with an offence under section 146 (sexual intercourse with a female under 14 or 14 but under 16) in respect of a person under the age of fourteen years, the fact that the person consented to the commission of the offence is not a defence to the charge.

Section 140 implicitly recognizes that a young girl who understands the nature of the sexual act may give an otherwise valid consent to it:[238] statute makes the consent irrelevant. While statute had long prohibited sexual intercourse with children through "carnal knowledge" provisions, it was not until an English statute of 1880[239] that the consent of a child under 13 years-old was declared not to be a defence to a charge of indecent assault. For most of the nineteenth century prior to the enactment of this statute, indecent assault was charged as common assault. Judges contrasted charges of common assault with those involving carnal knowledge, where statutory intervention had been necessary to make the girl's consent irrelevant, and considered that, in the absence of a statutory provision, consent to an assault could be given where the child understood the nature of the act.[240] G.W. Burbidge, writing on the Canadian criminal law as it stood on September 1, 1889, commented that:

> "This unsatisfactory state of the law as to the consent of young persons has been remedied in England both as to boys and girls by the Act 43 & 44 Vict. c. 45 [1880], by which it is enacted that it shall be no defence to a charge or indictment for an indecent assault on a young person under the age of thirteen to prove that he or she consented to the act of indecency. A similar statute could, with advantage, be passed in Canada."[241]

A similar provision was enacted in Canada in 1890,[242] with the age of 14 substituted for 13.[243] The advantage of the new legislation lay in the fact that convictions could be obtained because the cases which allowed consent by young children to constitute defences to indecent assault charges no longer applied.[244] However, the inclusion of consensual touching of children in assault offences prefigured later problems in connection with consent to physical harm.

The limitations on the kind of physical harm to which a valid consent can be given by anyone were articulated in the 1934 English case of *R. v. Donovan,*[245] and are now contained in section 245.1(2) of the *Criminal Code*, which defines "bodily harm" as "any hurt or injury to the complainant that interferes with his or her health or comfort and that is more than merely transient or trifling in nature." It was pointed out earlier in the chapter in the discussion of the new sexual assault offences that the exception provision in sec-

tion 246.1(2) of the *Criminal Code*, where the accused is less than three years older than a consenting complainant who is less than 14, may allow a child under 14 to give a valid consent to being injured by a person less than three years older. The exception provision was simply an attempt to provide a defence for the sexual assault provisions that Bill C-53 (which was not enacted) had provided for the proposed offence of sexual misconduct with a person under age 14. However, while the defence in Bill C-53 would have prevented a conviction for sexual miseonduct, it would not have prevented a conviction for sexual assault causing injury under the Bill's sexual assault provisions, which did not mention consent. The wording of the exception provision in section 246.1(2) implies that consent by a complainant who is less than 14 constitutes a defence to even the most serious sexual assault offences. If the facts disclose consensual sexual intercourse with a child under 14, a prosecutor could still charge under s. 146(1), which was to have been repealed by Bill C-53. There is an ironic parallel here with the situation in Canada prior to the 1890 legislation.[246]

Once the fixed age of 14 is removed for the purposes of the exception provision, the consent that is required is governed by the common law and section 244(3) of the *Criminal Code*. This section seems more useful in connection with adults. The factors mentioned in the section (the application of force, threats or fear of the application of force, fraud and the exercise of authority) would vitiate the consent given by children even at common law,[247] and these factors will not necessarily be present in the case of young children. To this extent, the nature of the special protection needed by children was overlooked.

What is regrettable is that the existing protection for children has been eroded, since the common law position was (and presumably still is) that the consent of a young child can constitute a defence to an assault.[248] In this regard, the assumption may have been made that for the purposes of the exception provision, a valid consent could not be given by a child of, say, less than 12 years-old. The legal history of child victims of indecent assaults shows that the effective protection of children requires greater certainty.[249] As with the former indecent assault legislation, a minimum age for giving valid consent must be specified. At the same time, the Committee's findings regarding the sexual exploitation of children by youths not much older than themselves[250] indicate the risks involved in retaining the exception in any form.

Major Legal Trends

As the preceding synopsis indicates, the Canadian criminal law of sexual offences (especially as it relates to children and young persons) has been shaped more by perceived necessity than by logical rigour. Accurate historical generalizations are difficult to make; there is always the danger of attributing to a succession of past legislators a legal strategy which they themselves may never have contemplated. Even so, **based on our knowledge of Canadian legis-**

lative history in this regard, a number of broad conclusions are justified. These conclusions help to point out the strengths and the weaknesses of the law of sexual offences up to January, 1983 and provide a basis for evaluating changes in the law.

1. *Sexual Intercourse with Girls.* The act of sexual intercourse, especially when engaged in with girls under a certain age, has traditionally been viewed as conduct warranting separate legal treatment. The several "sexual intercourse" offences cited in the review bear out this observation.

2. *Ages of Girls Protected.* The ages of girls sought to be protected by the sexual intercourse offences have been increased over the years. Where the girl is under 14, the law emphasizes in several ways the severity with which it views this conduct: by making the girl's consent to the sexual intercourse no defence to the charge; by making the accused's belief that the girl was over 14 no defence to the charge; and by making the penalty for the offence introduced in January, 1983 equivalent to that of the former offence of rape, namely, life imprisonment.

   Similarly, less absolute protection from sexual intercourse in various circumstances (sexual offences with females 14 and 15 and the seduction offences) was eventually provided for young females up to the age of 21.

3. *Other Forms of Sexual Conduct with Young Persons.* Concerning other forms of sexual conduct (the former indecent assault offences), in the case of males and females under age 14, the law also provided absolute protection. Here again, the fact that the young person consented to the sexual act was not a defence to the charge. Further, the law regulates certain heterosexual and homosexual conduct (buggery, gross indecency) where the two partners are not married to each other and where one of the parties is under age 21, regardless of the person's consent to the sexual act.

4. *Private, Consensual Sex Between Two Adults.* Consensual sexual conduct in private between two persons, whether it be homosexual or heterosexual, has since 1969 been considered not the business of the criminal law, provided that the participants are either married to each other or are 21 or older.

5. *The Publication of Complainants' Identities.* Historically, the publication of the identities of sexual victims has not been viewed as a pressing concern by Canadian legislators. Some legal protection against identification was provided in 1976, but even this protection was arbitrarily limited to female victims of only four specific offences, leaving the victims of other sorts of offences with only the informal protective mechanisms of the courts, the media and the legal reporting services.

6. *The Testimony of Sexual Complainants and Children.* Although the truthfulness of sexual victims has come to be viewed with less scepticism by the law than formerly (an example being the gradual displacement of the requirement of "corroboration" of a sexual victim's testimony), the law continues to view the evidence of children generally (and hence of child sexual victims) with suspicion, and thus may make it more difficult to convict sexual assailants of children than to convict sexual assailants of adults.

7. ***Abuses of Family or Social Trust.*** **Apart from a few references, the *Criminal Code* sexual offences have failed to recognize explicitly legal and social relationships which, when abused, may place the child or young person in continuing jeopardy, for example, the "common law" husband of a woman who has children from a previous marriage.**

8. ***Sentencing.*** **Due to the lack of *Criminal Code* sexual offences explicitly recognizing the many varieties of child sexual abuse, there is no coherent sentencing policy in the *Criminal Code* where child sexual abuse is found to occur. For example, consensual homosexual conduct (on a secluded public beach) between two 25 year-old males, and male homosexual conduct between a 35 year-old and a 14 year-old, are both instances of the offence of "gross indecency", notwithstanding the obvious qualitative differences between the two behaviours. Moreover, the 25 year-olds in the former instance and the 35 year-old in the latter instance are liable to the same maximum punishment, again, notwithstanding the widely different levels of blameworthiness in the respective circumstances.**

9. ***The Lack of a Child-Oriented Legal Framework.*** **Apart from the offences proscribing sexual intercourse with girls or young women in various contexts, Canadian criminal law has tended to use the legal framework applicable to sexual offences against adults in dealing with sexual offences against children. This approach is objectionable on two major grounds. First, it fails to appreciate that adult sexual abuse is, along a number of dimensions, different in kind from child sexual abuse, and consequently, that child sexual victims need a legal framework tailored to their special needs and vulnerabilities. Second, it further fails to appreciate that "child sexual abuse" is itself a multi-faceted phenomenon, and that it is both confusing and counter-productive to lump very different sorts of inappropriate sexual behaviours with children together into a few vague legal categories such as "gross indecency", "sexual assault" or "sexual exploitation".**

In light of these considerations, it is evident that the Canadian criminal law of sexual offences up to January, 1983 evinced some deficiencies which detracted from the protection the law affords children and youths.

Limitations of 1983 Amendments (Bill C-127)

On January 4, 1983, a new set of sexual offences and related provisions came into force in Canada and partially replaced the former legal framework. This development provides a case study concerning the extent to which the new sexual offences take into account the special problems in affording protection to children and youths.

The broad approach of the 1983 changes was the classification of non-consensual sexual acts as species of assaults and violence rather than as unacceptable forms of sexual gratification. Accordingly, the former offences of rape (which required proof of sexual intercourse), sexual intercourse with a feeble-minded female (which also required such proof), and indecent assault on a male or a female, were repealed. These offences were replaced by a three-tiered scheme of "sexual assault" offences, reviewed earlier in this chapter, which are

graded according to the nature of the additional circumstances which accompany the act. The term "sexual assault" was not defined, although it will likely be taken to mean either an assault[251] directed at a person's sexual organs, or an assault which, from the circumstances, is clearly sexually motivated.

In addition to re-classifying criminal sexual behaviour, the 1983 amendments introduced other important changes. The conditions under which the complainant's submission to or acquiescence in the sexual act will not be regarded as a valid legal consent to the act were broadened, although in somewhat vague terms.[252] The requirement of "corroboration" of a sexual assault victim's testimony is no longer required; this amendment may result in a greater number of prosecutions and convictions of sexual offenders. Where non-consensual sexual intercourse occurs between a husband and his wife, this is a form of sexual assault and can be prosecuted as such. Under the former law, a husband could not be convicted of raping his wife.[253] Moreover, the Crown can now compel the spouse of an accused sexual offender to testify in court for virtually all sexual crimes.

The new law also provides additional protection against identification of sexual victims in the media and restricts enquiries into a complainant's prior sexual conduct with persons other than the accused.

Notwithstanding these reforms, many of which will be helpful in the prosecution of sexual assaults against adults, in the Committee's judgment several of the changes introduced in 1983 are seriously deficient in relation to affording sufficient protection for children and youths who are victims of sexual offences. These deficiencies were born of the age-old practice of using a legal framework designed for adult sexual victims in purporting to deal with child sexual victims. Such a framework fails to deal adequately either with the peculiar vulnerabilities of children or with the very different reality of child as opposed to adult sexual abuse. Several examples suffice to demonstrate these deficiencies in relation to the child sexual victim.

1. **Under the former law, the consent of a person under 14 to be touched sexually was not a defence for the accused. Under the changes introduced in 1983, however, the consent of a person under 14 to be touched sexually is a defence, provided that the older party is less than three years older than the complainant. Implicit in this amendment is the premise that consensual sexual activity between young persons who are relatively close in age should not be prohibited (provided that the act is other than that of sexual intercourse, since the prohibition against sexual intercourse with females under 14 remains in the *Criminal Code*). This was a major step which assumed, in an information vacuum, that this form of behaviour was not harmful to the younger person.[254]**

2. **The law traditionally has refused to recognize the consent of a person who willingly subjects himself or herself to physical harm (as a means of sexual gratification) at the hands of another. Remarkably, the 1983 amendments left this principle intact where the "victim" is an adult, but provided that, where the complainant was under 14 and the accused was less than three years older than the complainant, the complainant's consent to**

such conduct was a good defence to the charge.[255] In the Committee's judgment, this was a serious legislative oversight.

3. **As noted earlier, the 1983 amendments set out certain "aggravating" factors which will elevate a sexual assault into a more serious form of offence. These factors, for example, the use or threatened use of a weapon, the threatening of or causing of bodily harm to the complainant, gang attacks, or the wounding or maiming of the complainant, may be the most prevalent aggravating circumstances against *adult* sexual victims, but they are not particularly relevant to sexual assaults on children, as indicated by the Committee's research findings. Different "aggravating" factors come into play where the sexual victim is a child, for example, the very nature of the sexual act in which the child is compelled to engage, and the legal or social relationship between the child and his or her assailant.**

4. **Although the 1983 amendments removed the requirement of corroboration in sexual cases,[256] they did not reform the general legal principles which apply to children's evidence. Many sexual offences against children are committed in private places when the child is alone with the offender. Consequently, in prosecutions of sexual offences against children, the testimony of the child victim typically is crucial to proving that the offence was committed. Canadian law places serious fetters both on the opportunity of a child to testify in court at all, and on the legal effect of the child's testimony, if received. Here again, the 1983 amendments ignored the special needs of the child sexual victim.**

5. **Under the former law, the *Criminal Code* stated certain presumptions which made it easier to prove the offence of unlawful sexual intercourse with a girl 14 or 15. The 1983 amendments repealed these presumptions, which will make it more difficult to prove this offence. This can only be explained as a legislative oversight.**

6. **Although the 1983 amendments provided additional protection against the identification of sexual victims in the media, the victims of the offences of unlawful sexual intercourse with a female under 16 and of "indecent act" (which applies to the act of indecent exposure) did not receive such protection.[257]**

   Here again, the interests of child sexual victims were not dealt with in the 1983 changes to the *Criminal Code*. Further, such protection from identification as was provided extends neither to official court transcripts nor to the legal reporting services, a situation which is clearly documented by the Committee's research findings.

Other implications of the 1983 amendments are considered in the following chapters of this section of the Report.

Criminal Law Reform Act, 1984 (Bill C-19)

Bill C-19 received its First Reading in Parliament on February 7, 1984. This Bill introduced several proposed amendments to the *Criminal Code* relating to a number of matters specified in the Committee's Terms of Reference.

Consequential Amendment to Incest Offence

The Committee concurs that section 150(3) of the *Criminal Code* should be amended to provide greater protection to a victim of incest.[258] It has recommended that the sanction should not apply to a person who has sexual intercourse under restraint, duress or fear of the person with whom he or she has the sexual intercourse. **The Committee sharply rejects, however, the Bill's archaic proposal to continue to confine this protection to female victims and to provide that the court may give them a discharge only after a determination of their "guilt" and after being satisfied that they committed the offence by reason only of restraint, duress or fear. The Committee strongly believes that no victim of incest should have to suffer a determination of guilt in addition to the harm of the offence itself.**

Obscenity

The Committee endorses the Bill's clarification that the obscenity provisions of the *Criminal Code* may apply to "any matter or thing" and are not limited to printed publications.[259] The proposal to allow crime, horror, cruelty, violence or sex to constitute obscenity may prove useful in taking action against degrading representations of adult men and women.

Soliciting

As indicated in this Report, the Committee supports making the offence of soliciting applicable to prospective customers as well as to prostitutes, and defining "public place" to include a motor vehicle located in or on a public place.[260] In addition, **in order to deter persons who seek to use young prostitutes, the Committee has recommended amending the *Criminal Code* to provide for a separate offence of buying or trying to buy sexual acts with a person under 18 years-old.**

Communicating Venereal Disease

The Committee is in agreement with the Bill's proposal to repeal the offence of communicating a venereal disease.[261] In connection with the repeal of this offence, the Committee has recommended a number of initiatives to provide improved protection for children and youths from health risks associated with sexually transmitted diseases.

Restitution

In the Bill, "restitution" includes payment of money by the offender to the victim, as well as the restoration of property.[262] These reparations can include payment for special damages and loss of income or support incurred as a result

of bodily injury arising from an offence, as well as punitive damages. **In its review of provincial criminal injuries compensation boards, the Committee concluded that it is essential that the physical and emotional pain and suffering experienced by the victims of sexual assault be explicitly recognized in the enabling legislation of each jurisdiction.**

In light of the development of the provincial Boards to date as an important resource for assistance to victims of sexual assaults, the Committee believes that the primary emphasis should remain on publicizing services provided by existing provincial programs and on ensuring that they are adequately funded.

Dangerous Offenders

The Bill completes the process of deleting reference to the sexual offences in the definition of "serious personal injury offence."[263] As pointed out in chapter 37, before the January, 1983 amendments an offence or attempt to commit an offence of rape, indecent assault on a female, indecent assault on a male, sexual intercourse with a female under 14 or 14 and 15, and gross indecency, were considered to be "serious personal injury offences." Prior to the proclamation of Part XXI of the *Criminal Code* in 1977, a conviction for the offences of or attempts to commit buggery and bestiality would ground dangerous sexual offender applications. Since the January, 1983 amendments, the only sexual offences mentioned in section 687(b), which defines "a serious personal injury offence", are the new sexual assault offences and attempts to commit them. The Bill defines serious personal injury offence in part as an offence "for which the offender may be sentenced to imprisonment for ten years or more." A number of major sexual offences do not meet this requirement. Whether the application proceeds under section 688(a) (pattern of repetitive behaviour) or under 688(b) (conduct in any sexual matter showing failure to control sexual impulses), it must be shown that there has been a conviction for "a serious personal injury offence".

A conviction for a sexual offence against a child provides a valuable indicator of serious criminal conduct. Reference to the sexual assaults in the definition of serious personal injury offence was deleted in the Bill in order to emphasize that with a few stated exceptions, *any* indictable offence involving violence or endangering life or safety is a "serious personal injury offence". However, the Committee has found that serious sexual offences against children more often involve threats or coercion than violence or danger to life or safety. Since the provisions in the Bill (like the present provisions in the *Criminal Code*) depend upon establishing a conviction for a serious personal injury offence, the Bill's provisions may provide less protection for children than is currently afforded by the *Criminal Code* provisions.

At present, an application can be made under either section 688(a) or 688(b). In the case of sexual offenders, it is usually made under the latter provision which requires, in addition to a serious personal injury offence, proof

that "the offender, by his conduct in an sexual matter including that involved in the commission of the offence for which he has been convicted, has shown a failure to control his sexual impulses . . . ". The Bill would delete this provision, so that a future application could not be based on it. Section 688(a) provides an alternate basis for an application which requires, in addition to a serious personal injury offence, proof that "the offender constitutes a threat to the life, safety or *physical or mental well-being* of other persons on the basis of evidence establishing . . . a pattern of repetitive behaviour by the offender . . . showing . . . a likelihood of his inflicting severe psychological damage upon other persons . . . in the future." The comparable requirement under the Bill is proof that the offence "forms a part of a pattern of repetitive behaviour by the offender showing a . . . wanton and reckless disregard for the lives, safety or *physical well-being* of other persons." Even if an application under the dangerous offender provisions of the *Criminal Code* were successful, the Committee's findings indicate that unless the criterion of a threat to physical well-being is interpreted liberally, it is unlikely to be met in many cases involving convicted child sex offenders.

In light of the Committee's recommendations concerning dangerous child sexual offenders, the Committee endorses the Bill's proposal to delete mention of the prediction of future behaviour from the dangerous offender legislation. However, several of the other proposed amendments would make the dangerous offender provisions of Bill C-19 less appropriate for providing effective protection in many cases of sexual offences against children since the Bill fails:

1. **To mention any sexual offences in its definition of "serious personal injury offence".**
2. **To specify the conduct by which a sexual offender has disregard for children and youths who constitute the majority of victims.**
3. **To indicate that the behaviour by the offender need not show a disregard for the lives, safety or physical well-being of children and youths who are the victims of sexual offences.**

On the basis of its review, the Committee recommends that new legislation, separate from the dangerous offender provisions, and meeting the above requirements, should be enacted to provide added protection for children and youths against sexual offences. Failing this, in order to secure the necessary protection for children, the dangerous offender provisions should be amended to meet the above requirements.

Constitutional Issues

The sexual abuse and exploitation of children and the access by children to pornographic material are matters which fall within the legislative competence of both Parliament and the provincial legislatures, although in different respects. Parliament has legislative jurisdiction over criminal law and criminal

procedure; the federal *Criminal Code*, in addition to prescribing the rules of procedure in criminal proceedings, contains several offences directed at child sexual abuse, prostitution[264] and obscene publications.[265] The federal *Young Offenders Act* outlines the principles and procedures which apply where a federal offence (for example, sexual assault) is committed by a person under the age of 18. The rules of evidence with respect to proceedings under either of these enactments are also governed by federal law. Further, Parliament has legislative jurisdiction over the establishment, maintenance and management of penitentiaries, and is responsible for providing correctional services (including a mechanism for parole) for offenders who receive a sentence of (or sentences totalling) two or more years of imprisonment.

The legislative jurisdiction of the 10 provincial legislatures and the two territorial councils[266] is also relevant to the Committee's mandate. Each province is responsible for the administration of justice within its borders, including the management of police forces, the prosecution of alleged offenders, the organization of criminal and family courts and the provision of correctional services for offenders who receive a sentence of (or sentences totalling) less than two years' imprisonment. The provinces also have jurisdiction to enact laws concerning child welfare and related matters and to authorize both legal intervention into the family and consequent sanctions where minimum standards of child care are violated. Proceedings under these laws are governed by rules of procedure and evidence enacted at the provincial level. With respect to the issue of access by children to pornographic material, the provinces have jurisdiction to regulate the manner of distribution and sale of publications disseminated within their borders[267] and also to regulate, by way of censorship, classification or other means, the public exhibition of films.[268]

The legal regulation of those matters falling within the Committee's mandate is in some respects a federal, and in other respects, a provincial, responsibility. Until fairly recently in Canada,[269] the important constitutional question has been, not whether a particular law could validly be enacted, but rather which level of government could enact it. With the passage of the Canadian *Charter of Rights and Freedoms*, however, more far-reaching constitutional issues are joined. The *Charter* is binding on all levels of government and guarantees the enjoyment of certain basic rights and freedoms "subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." The *Charter* now constitutes part of the supreme law of Canada. Any law that is inconsistent with its provisions is, to the extent of the inconsistency, of no force or effect. Accordingly, the interpretation by Canadian courts of these broad constitutional prescriptions will have an important impact on matters within the Committee's mandate.

References

Chapter 12: The Sexual Offences

[1] An example of an obsolete offence is section 154 of the *Criminal Code* which prohibits the seduction of female passengers by male owners or masters of vessels. This offence is a vestige of nineteenth-century immigration legislation enacted to protect women coming to Canada as immigrants (see, *An Act to Amend the Immigration Act, 1869*, S.C. 1872, c. 28, s. 11), which was incorporated into the 1892 *Criminal Code* (*The Criminal Code*, S.C. 1892, c. 29, s. 184). The repeal of former section 139 of the Code in January, 1983 removed the requirement for corroboration, as well as the defence of subsequent marriage to the female passenger.

[2] See Consent, in this chapter.

[3] *Pappajohn v. The Queen* (1980), 52 C.C.C. (2d) 481 (S.C.C.).

[4] *Cr. Code*, s. 144.

[5] *Cr. Code*, s. 145.

[6] Blackstone, 4 *Commentaries on the Laws of England* (1st ed. Oxford: Clarendon Press, 1769), Book 4 at 210.

[7] See *Russell on Crime* (12th ed. London: Stevens & Sons, 1964) vol. 1 at 706-707.

[8] *An Act relating to treasons and felonies*, 1758, 32 Geo. 2, c. 13, s. 7 (Nova Scotia).

[9] *Crimes and Misdemeanors: Of Offences Against the Person*, R.S.N.S. 1864 (3rd Series), c. 164, s. 13.

[10] *An act for consolidating and amending the Statutes in this Province relative to offences against the person*, 1841, 4-5 Vict., c. 27, s. 16 (Prov. of Can.).

[11] *Of homicide and other offences against the person*, R.S.N.B. 1854, c. 149, s. 7.

[12] *An Act relating to the punishment of certain cases of felony and misdemeanor*, Rev. Acts of P.E.I. 1861, c. 28, s. 2.

[13] *An Act respecting offences against the person*, S.C. 1869, c. 20, s. 49.

[14] *An Act to amend the Act respecting offences against the person*, S.C. 1873, c. 50, s. 1.

[15] *The Criminal Code*, S.C. 1892, c. 29, s. 266.

[16] *Ibid.*, s. 266(2).

[17] *An Act to amend the Criminal Code*, S.C. 1921, c. 25, s. 4.

[18] *Martin's Criminal Code, 1955* (Toronto: Cartwright & Sons, 1955) at 233.

[19] *Criminal Code*, S.C. 1953-54, c. 51, s. 136.

[20] *R. v. McCathern* (1927), 48 C.C.C. 54 (Ont. C.A.).

[21] *Ibid.*

[22] *Criminal Law Amendment Act, 1972*, S.C. 1972, c. 13, s. 70.

[23] See, *e.g.*, *R. v. Ellerton* (1927), 49 C.C.C. 94 (Sask. C.A.); *R. v. Galsky* (1930), 54 C.C.C. 199 (Man. C.A.); *R. v. Lovering* (1948), 92 C.C.C. 65 (Ont. C.A.); and *R. v. Thomas* (1951), 100 C.C.C. 112 (Ont. C.A.).

[24] *Criminal Code*, S.C. 1953-54, c. 51, s. 134.

[25] See, *e.g.*, *R. v. Camp* (1977), 36 C.C.C. (2d) 511 (Ont. C.A.); *R. v. Firkins* (1977), 37 C.C.C. (2d) 227 (B.C.C.A.), *leave to appeal to S.C.C. refused* 37 C.C.C. (2d) 227n; *R. v. Daigle* (1977), 37 C.C.C. (2d) 386 (N.B.C.A.); and *R. v. Riley* (1978), 42 C.C.C. (2d) 437 (Ont. C.A.).

[26] See *Cr. Code*, s. 586 and *Canada Evidence Act*, R.S.C. 1970, c. E-10, *as am.*, s. 16(2).

[27] *Criminal Law Amendment Act, 1975*, S.C. 1974-75-76, c. 93, s. 8.

[28] *Ibid.*

[29] (1980), 53 C.C.C. (2d) 225 (S.C.C.).

[30] See, *e.g.*, the remarkable fact situation in *R. v. Konkin* (1983), 3 C.C.C. (3d) 289 (S.C.C.).

[31] *Supra*, note 29 at 232.

[32] *Criminal Law Amendment Act, 1975*, S.C. 1974-75-76, c. 93, s. 44.

[33] *Cr. Code*, s. 246.1, enacted by S.C. 1980-81-82, c. 125, s. 19.

[34] An "assault" is defined in s. 244 of the *Cr. Code*.

[35] See, *e.g.*, *R. v. Rolfe* (1952), 36 Cr. App. R. 4 (C.C.A.).

[36] *Cr. Code*, s. 245.1 (2), enacted by S.C. 1980-81-82, c. 125, s. 19.

[37] Smith and Hogan, *Criminal Law* (London: Butterworths, 1979) at 356. See also Mewett and Manning, *Criminal Law* (Toronto Butterworths, 1978) at 471 *ff.*

[38] [1934] 2 K.B. 498 (C.C.A.).

[39] *R. v. Cullen* (1948), 93 C.C.C. 1 (Ont. C.A.).

[40] *Cullen v. The King* [1949] 3 D.L.R. 241 (S.C.C.).

[41] *R. v. Abraham* (1974), 30 C.C.C. (2d) 332 (Que. C.A.).

[42] *Cr. Code*, s. 246.1(2).

[43] *Cr. Code*, s. 140.

[44] [1951] 2 All E.R. 834 (K.B.D.).

[45] *Ibid.*, at 834.

[46] The obvious problems posed by the English decisions of *Fairclough v. Whipp*; R. v. Burrows (1951), 35 Cr. App. R. 180 (C.C.A.); and *D.P.P. v. Rogers* (1953), 37 Cr. App. R. 137 (D.C.) were addressed in the *Indecency with Children Act, 1960*, c. 33 (U.K.).

[47] [1970] 2 C.C.C. 366 (P.E.I.S.C.).

[48] See also *R. v. Baney*, [1972] 2 O.R. 34 (C.A.).

[49] See generally Gold, *Assaults, Invitations and Attempted Assaults* (1972), 17 C.R.N.S. 266, in which the author reviews the difficulties posed by English and Canadian judicial decisions in this area.

[50] *An Act respecting Offences against the Person*, S.C. 1869, c. 20, s. 53.

[51] *An act to consolidate and amend the Statute Law of England and Ireland relating to offences against the person*, 1861, 24-25 Vict., c. 100, s. 52 (U.K.).

[52] *An Act respecting offences against the person*, R.S.C. 1886, c. 162, s. 41.

[53] *An Act further to amend the Criminal Law*, S.C. 1890, c. 37.

[54] *Ibid.*, ss. 40, 41.

[55] *Ibid.*, s. 13(1).

[56] *R. v. Brasier* (1779), 1 Leach 199; 168 E.R. 202.

[57] *An Act further to amend the Criminal Law*, S.C. 1890, c. 37, s. 13(2).

[58] *Ibid.*, s. 7.

[59] *Ibid.*, s. 3.

[60] *The Criminal Code*, S.C. 1892, c. 29, s. 259(b).

[61] *Cullen v. The King* (1949), 94 C.C.C. 337 (S.C.C.).

[62] See, *e.g.*, *R. v. Yates* (1946), 85 C.C.C. 334 (B.C.C.A.); and *R. v. McBean* (1953), 107 C.C.C. 28 (B.C.C.A.).

[63] *Criminal Code*, S.C. 1953-54, c. 51, s. 134.

[64] *Criminal Law Amendment Act, 1975*, S.C. 1974-75-76, c. 93, s. 8.

[65] Cr. Code, s. 246.4. The prohibition also applies to the offences of incest and gross indecency.

[66] *Criminal Code*, S.C. 1953-54, c. 51, s. 141.

[67] *Criminal Law Amendment Act 1972*, S.C. 1972, c. 13, s. 70.

[68] *Cr. Code*, s. 155. See also s. 158.

[69] *An Act for better proportioning the punishment to the offences in certain cases, and for other purposes therein mentioned*, 1842, 6 Vict., c. 5, s. 5 (Prov. of Can.).

[70] *An Act respecting offences against the person*, S.C. 1869, c. 20, s. 64.

[71] *An Act respecting offences against Public Morals and Public Convenience*, R.S.C. 1886, c. 157, s. 2.

[72] *An Act further to amend the Criminal Law*, S.C. 1890, c. 37, s. 7.

[73] *Ibid.*, s. 3.

[74] *The Criminal Code*, S.C. 1892, c. 29, s. 260.

[75] *Criminal Law Amendment Act, 1972*, S.C. 1972, c. 13, s. 70.

[76] *Cr. Code*, s. 155.

[77] See *R. v. Jacobs* (1817), Russ. & Ry. 331, 168 E.R. 830.

[78] See *R. v. Wishart* (1954), 20 C.R. 163 (B.C.C.A.). The most recent reported case involving bestiality is *R. v. Triller* (1980) 55 C.C.C. (2d) 411 (B.C. Co. Ct.), in which the accused attempted to have intercourse with a male dog.

[79] *Criminal Law Amendment Act, 1968-69*, S.C. 1968-69, c. 38, s. 7.

[80] "Public place" is expressed in s. 138 of the *Cr. Code* as including "any place to which the public have access as of right or by invitation, express or implied."

[81] See *Cr. Code*, s. 158 (2)(b).

[82] *Leviticus*, 18: 22, 23.

[83] Blackstone, *Commentaries on the Laws of England*, (1st ed. Oxford: Clarendon Press, 1769), Book 4 at 215-16.

[84] *Of homicide and other offences against the person*, R.S.N.B. 1854, c. 149, s. 10.

[85] *An Act for consolidating and amending the Statutes in this Province relative to offences against the person*, 1841, 4-5 Vict., c. 27, s. 15 (Prov. of Can.); *An Act respecting offences against the person*, S.C. 1859, c. 91, s. 22.

[86] *Of offences against the person*, R.S.N.S. 1864, c. 164. s. 16.

[87] *An Act respecting offences against the person*, S.C. 1869, c. 20, s. 63.

[88] *An Act respecting offences against Public Morals and Public Convenience*, R.S.C. 1886, c. 157, s. 1.

[89] *The Criminal Code*, S.C. 1892, c. 29, s. 174.

[90] *Criminal Code*, S.C. 1953-54, c. 51, s. 147.

[91] *Cr. Code*, ss. 150(1) and 150(4).

[92] *Cr. Code*, s. 150(3).

[93] *Cr. Code*, s. 150(2).

[94] *Punishment of Incest Act*, 1908, 8 Edw. 7, c. 45 (U.K.).

[95] Hogan, "On Modernising the Law of Sexual Offences", in P.R. Glazebrook, (ed.) *Reshaping the Criminal Law* (London: Stevens & Sons, 1978) at 187-88.

[96] *Of offences against public morals and decency*, R.S.N.B. 1854, c. 145, s. 2.

[97] *An Act relating to the punishment of certain cases of felony and misdemeanor*, Rev. Acts P.E.I. 1861, c. 27, s. 3.

[98] *Of offences against public morals*, R.S.N.S. 1864, c. 160, s. 2.

[99] In *R. v. Halifax Tramway Co.* (1898), 1 C.C.C. 424 (N.S.C.A.), it was held that the authority to repeal provincial legislation in an area that had passed to the federal government was, as a result of Confederation in 1867, vested in the federal Parliament.

[100] Taschereau, *The Criminal Code of Canada, 1893* (3rd ed. Toronto: Carswell, 1893) at 119-20.

[101] *An Act further to amend the Criminal Law*, S.C. 1890, c. 37, s. 8.

[102] *Ibid.*

[103] *The Criminal Code*, S.C. 1892, c. 29, s. 176.

[104] *An Act to amend the Criminal Code*, S.C. 1934, c. 47, s. 6.

[105] *Martin's Criminal Code, 1955, supra*, note 18 at 238.

[106] *Bergeron v. The King* (1930), 56 C.C.C. 62 (Que. K.B.).

[107] *Criminal Code*, S.C. 1953-54, c. 51, s. 131(1).

[108] *Can. H. of C. Deb.*, Feb. 12, 1954, at 2037, and Apr. 1, 1954 at 3560.

[109] *An Act to amend the Criminal Code in relation to Sexual Offences and other Offences against the Person*, S.C. 1980-81-82, c. 125, s. 5.

[110] *Criminal Law Amendment Act, 1972*, S.C. 1972, c. 13, s. 70.

[111] A child born out of wedlock is not a "step-daughter", since to be a man's "step-daughter" the child must be a product of his wife's previous marriage: *R. v. Groening* (1953), 16 C.R. 389 (Man. C.A.).

[112] *An Act further to amend the Criminal Law*, S.C. 1890, c. 37, s. 4.

[113] *The Criminal Code*, S.C. 1892, c. 29, s. 183.

[114] *The Criminal Code Amendment Act*, S.C. 1900, c. 46, s. 3 (*re:* s. 186A).

[115] *An Act to amend the Criminal Code and the Canada Evidence Act*, S.C. 1917, c. 14, s. 2.

[116] *Criminal Code*, S.C. 1953-54, c. 51, s. 145.

[117] *An Act to amend the Criminal Code in relation to Sexual Offences and other Offences against the Person*, S.C. 1980-81-82, c. 125, s. 5.

[118] *An Act further to amend the Criminal Law*, S.C. 1890, c. 37, s. 4.

[119] *The Criminal Code*, S.C. 1892, c. 37, s. 183.

[120] *Ibid.*, s. 184(2).

[121] *An Act further to amend the Criminal Code, 1892*, S.C. 1900, c. 46, s. 3 (*re:* s. 183A).

[122] *An Act to amend the Criminal Code*, S.C. 1920, c. 43, s. 5.

[123] *Ibid.*, s. 17.

[124] *Ibid.*, s. 5.

[125] *An Act to amend the Criminal Code*, S.C. 1959, c. 41, s. 10. See generally *R. v. Wiberg* (1955), 113 C.C.C. 257 (Alta. C.A.).

[126] *Cr. Code*, s. 140.

[127] *Cr. Code*, s. 146(3).

[128] The charge of rape was available where the sexual intercourse was perpetrated without the female's consent.

[129] *An act relating to treasons and felonies*, 1758, 32 Geo. 2, c. 13, s. 8 (Nova Scotia).

[130] *Of offences against the person*, R.S.N.S. 1864 (3d ser.), c. 164. s. 14.

[131] *Ibid.*, s. 15.

[132] *An Act for consolidating and amending the Statutes in this Province relative to offences against the person*, 1841, 4-5 Vict., c. 27, s. 17 (Prov. of Can.). See also *An Act respecting offences against the person*, S.C. 1859, c. 91, s. 20.

[133] *An Act for consolidating and amending the Statutes in this Province relative to offences against the person*, 1841, 4-5 Vict., c. 27, s. 17 (Prov. of Can.). See also *An Act respecting offences against the person*, S.C. 1859, c. 91, s. 21.

[134] *Of homicide and other offences against the person*, R.S.N.B. 1854, c. 149, ss. 8, 9.

[135] *Constitution Act, 1867*, 30-31 Vict., c. 3, s. 91, para. 27. The *Constitution Act*, 1982 changes the name of the *British North America Act*, 1867 to the *Constitution Act, 1867*.

[136] *An Act respecting offences against the person*, S.C. 1869, c. 20, s. 51.

[137] *Ibid.*, s. 52.

[138] *Ibid.*, s. 53.

[139] *An Act to amend the Act respecting offences against the person*, S.C. 1877, c. 28, s. 2.

[140] *An Act to punish seduction, and like offences, and to make further provision for the Protection of Women and Girls*, S.C. 1886, c. 52, s. 1(1).

[141] *An Act further to amend the Criminal Law*, S.C. 1890, c. 37, s. 3.

[142] *Ibid.*, s. 12. The intent of this amendment was to "give us a more stringent rule than is found in our present statutes". See *Can. H. of C. Deb.*, Apr. 10, 1890, col. 3161.

[143] *The Criminal Code*, S.C. 1892, c. 29.

[144] *Ibid.*, s. 181.

[145] *An Act to amend the Criminal Code, 1892*, S.C. 1893, c. 32.

[146] In the parliamentary debates on this amendment, it was explained that "Under the section as it stands now, mere illicit connection with a child between the ages of fourteen and sixteen years would not be an offence. There must be the element of seduction, and the object of the amendment to make that element unnecessary. In future, the element is not necessary to constitute the offence". See *Can. H. of C. Deb.*, Mar. 22, 1893, col. 2802.

[147] *An Act to amend the Criminal Code*, S.C. 1920, c. 43, ss.4, 17.

[148] *An Act to amend the Criminal Code*, S.C. 1959, c. 41, s. 9.

[149] See *R. v. Wiberg* (1955), 113 C.C.C. 257 (Alta. C.A.).

[150] *An Act to amend the Criminal Code*, S.C. 1934, c. 47, s. 9.

[151] *Criminal Code*, S.C. 1953-54, c. 51, s. 131(3).

[152] *Martin's Criminal Code, 1955, supra*, note 18 at 228.

[153] *Criminal Code*, S.C. 1953-54, c. 51, s. 134.

[154] *Criminal Law Amendment Act, 1975*, S.C. 1974-75-76, c. 93, s. 8.

[155] See the *Criminal Code*, R.S.C. 1970, c. C-34, *as am.*, s. 586; *Canada Evidence Act*, R.S.C. 1970, c. E-10, *as am.*, s. 16(2).

[156] *Criminal Law Amendment Act, 1972*, S.C. 1972, c. 13, s. 70.

[157] *Cr. Code*, s. 2.

[158] See *R. v. Probe* (1943), 79 C.C.C. 289 (Sask. C.A.); and *R. v. Red Old Man* (1978), 44 C.C.C. (2d) 123 (Alta. Dist. Ct.).

[159] Mewett and Manning, *Criminal Law* (Toronto: Butterworths, 1978) at 423.

[160] *An Act to punish seduction, and like offences, and to make further provision for the Protection of Women and Girls*, S.C. 1886, c. 52, s. 1.

[161] *Criminal Law Amendment Act, 1885*, 48-49 Vict., c. 69, s. 5(2) (U.K.).

[162] S.C. 1886, c. 52, s. 1.

[163] *An Act to amend the Act respecting offences against Public Morals and Public Convenience*, S.C. 1887, c. 48, s. 1.

[164] *The Criminal Code*, S.C. 1892, c. 29, s. 189.

[165] *The Criminal Code Amendment Act*, S.C. 1900, c. 46, s. 3.

[166] *Criminal Code*, R.S.C. 1927, c. 36, s. 219.

[167] *Criminal Code*, S.C. 1953-54, c. 51, s. 140.

[168] The main reason for this amendment was the judgment of the Saskatchewan Court of Appeal in *R. v. Probe* (1943), 79 C.C.C. 289.

[169] Mewett and Manning, *Criminal Law* (Toronto: Butterworths, 1978) at 422.

[170] *R. v. Gasselle* (1934), 62 C.C.C. 295 at 297 *per* MacKenzie J.A. (Sask. C.A.).

[171] *R. v. Schemmer*, [1927] 3 W.W.R. 417 (Sask. Dist. Ct.); *R. v. Blanchard* (1941), 75 C.C.C. 279 (B.C.C.A.). See also *R. v. Zambapys* (1923), 32 B.C.R. 510 (C.A.).

[172] *An Act to punish seduction, and like offences, and to make further provision for the Protection of Women and Girls*, S.C. 1886, c. 52, s. 1.

[173] *An Act further to amend the Criminal Law*, S.C. 1890, c. 37, s. 3.

[174] *An Act to amend the Criminal Code*, S.C. 1920, c. 43, ss. 4, 17.

[175] *Ibid.*

[176] *Criminal Code*, S.C. 1953-54, c. 51, s. 143.

[177] *Martin's Criminal Code, 1955, supra* note 18 at 239.

[178] *An Act to punish seduction, and like offences, and to make further provision for the Protection of Women and Girls*, S.C. 1886, c. 52, s. 2.

[179] See especially *R. v. Comeau* (1912), 19 C.C.C. 350 at 357 *per* Graham E.J. (N.S.C.A.).

[180] *Martin's Criminal Code, 1955*. supra, note 18 at 240.

[181] *An Act to amend the Act respecting Offences against Public Morals and Public Convenience*, S.C. 1887, c. 48, s. 2. See *Can. H. of C. Deb.*, May 5, 1887, at 278.

[182] *The Criminal Code*, S.C. 1892, c. 29, s. 184(2).

[183] *An Act respecting Offences against the person*, S.C. 1869, c. 20, s. 50.

[184] *An Act further to amend the Criminal Law*, S.C. 1890, c. 37, s. 9.

[185] *The Criminal Code*, S.C. 1892, c. 29, s. 684.

[186] *An Act further to amend the Criminal Law*, S.C. 1890, c. 37, s. 5.

[187] *Criminal Law Amendment Act, 1885*, 48-49 Vict., c. 69, s. 11 (U.K.).

[188] See, *e.g.*, *R. v. Jacobs*, *supra*, note 77; *R. v. Wollaston* (1872), 12 Cox C.C. 180 (C.C.A.); and *R. v. Rowed* (1842), 3 Q.B. 180.

[189] *The Criminal Code*, S.C. 1892, c. 29, s. 178.

[190] See *Can. H. of C. Deb.*, Apr. 10, 1890, Cols. 3161, 3162, 3170; and Gigeroff, *Sexual Deviations in the Criminal Law* (Toronto: University of Toronto Press, 1968) at 46-50.

[191] *Criminal Code*, S.C. 1953-54, c. 51, s. 149.

[192] *Cr. Code*, s. 246.4.

[193] *Cr. Code*, s. 138.

[194] Mewett and Manning, *Criminal Law* (Toronto: Butterworths, 1978) at 435.

[195] *Cr. Code*, s. 722.

[196] *R. v. Sidley* (1663), 1 Sid. 168 (K.B.). See generally Smith and Hogan, *Criminal Law* (4th ed. London: Butterworths, 1978) at 436-38.

[197] *An Act for consolidating into one Act and amending the Laws relating to idle and disorderly persons, Rogues and Vagabonds, incorrigible Rogues and other Vagrants in England*, 1822, 3 Geo. 4, c. 40, s. 3.

[198] *An Act respecting Vagrants*, S.C. 1869, c. 28, s. 1. Emphasis added.

[199] *An Act to amend "An Act respecting Vagrants"*, S.C. 1874, c. 43, s. 1.

[200] *An Act to remove doubts as to the power to imprison with hard labour under the Acts respecting Vagrants*, S.C. 1881, c. 31, s. 1.

[201] *An Act respecting offences against Public Morals and Public Convenience*, R.S.C. 1886, c. 157, s. 8.

[202] *An Act further to amend the Criminal Law*, S.C. 1890, c. 37, s. 6.

[203] See Gigeroff, *Sexual Deviations in the Criminal Law* (Toronto: University of Toronto Press, 1968) at 52.

[204] *The Criminal Code*, S.C. 1892, c. 29, s. 177.

[205] *Criminal Code*, S.C. 1953-54, c. 51, s. 130.

[206] Gigeroff, *supra*, note 203, at 57.

[207] *Juvenile Delinquents Act*, R.S.C. 1970, c. J-3.

[208] *The Young Offenders Act*, S.C. 1980-81-82, c. 110, proclaimed in April, 1984.

[209] *Juvenile Delinquents Act*, R.S.C. 1970, c. J-3, s. 2(1), emphasis added.

[210] *The Juvenile Delinquents Act, 1908*, S.C. 1908, c. 40.

[211] *Ibid.*, s. 29.

[212] *An Act to amend the Juvenile Delinquents Act, 1908*, S.C. 1924, c. 53, s. 4.

[213] *An Act to amend the Juvenile Delinquents Act, 1929*, S.C. 1936, c. 40, s. 2.

[214] See, *e.g.*, *R. v. Taylor* (1980), 55 C.C.C. (2d) 468 (P.E.I.S.C.).

[215] *R. v. Haig* (1970), 1 C.C.C. (2d) 299 at 303, *per* Hartt J. (Ont. C.A.).

[216] *Young Offenders Act*, S.C. 1980-81-82, c. 110, proclaimed in April, 1984.

[217] *Ibid.*, s. 3.

[218] *Cr. Code*, s. 168(2).

[219] *Cr. Code*, s. 168(4).

[220] *An Act to amend the Criminal Code*, S.C. 1918, c. 16, s. 1.

[221] *An Act to amend the Criminal Code*, S.C. 1932-33, c. 53, s. 3.

[222] *R. v. Vahey* (1931), 57 C.C.C. 378 (Ont. C.A.).

[223] *An Act to amend the Criminal Code*, S.C. 1935, c. 36, s. 1.

[224] *Criminal Code*, S.C. 1953-54, c. 51, s. 157.

[225] *Criminal Law Amendment Act, 1885*, 48-49 Vict., c. 69, s. 6 (U.K.). See generally *R. v. Webster* (1885), 16 Q.B.D. 134.

[226] *An Act to punish seduction, and like offences, and to make further provision for the Protection of Women and Girls*, S.C. 1886, c. 52, s. 4.

[227] *Ibid.*

[228] *An Act further to amend the Criminal Law*, S.C. 1890, c. 37, s. 3.

[229] *The Criminal Code*, S.C. 1892, c. 29, s. 187.

[230] *An Act further to amend the Criminal Code, 1892*, S.C. 1900, c. 46, s. 3.

[231] *Criminal Code*, S.C. 1953-54, c. 51, s. 156.

[232] *The Criminal Code*, S.C. 1892, c. 29, s. 684.

[233] *Criminal Code*, S.C. 1953-54, c. 51, s. 131.

[234] *Martin's Criminal Code, 1955, supra*, note 18 at 228. See also *R. v. Sam Sing* (1910), 17 C.C.C. 361 (Ont. C.A.).

[235] *Cr. Code*, s. 175(2).

[236] *An Act to amend the Criminal Code*, S.C. 1951, c. 47, s. 13.

[237] For an account of the problems that have arisen in England in charging an offence of this kind, see *R. v. Courtie* and commentary, [1983] Criminal Law Review 634, at 634-635.

[238] The wider principle is that a young person may give a valid consent which is usually a defence where a person is charged with an offence under the *Criminal Code* that requires the absence of consent: Starkman, *The Control of Life: Unexamined Law and the Life Worth Living* (1973), 11 Osgoode Hall Law Journal 175, note 17 at 179, cited in *Report of the Committee on the Operation of the Abortion Law* (Ottawa: Supply and Services Canada, 1977) at 237.

[239] *Criminal Law Amendment Act, 1880*, 43-44 Vict., c. 45, s. 2 (U.K.).

[240] See *R. v. Johnson* (1865), 10 Cox C.C. 114, at 115 (C.C.A.).

[241] Burbidge, *Digest of the Criminal Law of Canada* (Toronto: Carswell, 1890) at 242. The author was Judge of the Exchequer Court of Canada and a former Deputy Minister of Justice.

[242] *An Act further to amend the Criminal Law*, S.C. 1890, c. 37, s. 7.

[243] Of course, even at 14 a girl "might . . . be ignorant of the nature of the act [of sexual intercourse] . . . and of its possible consequences": *R. v. Case* (1850), 1 Den. 580, 169 E.R. 381 at 382, per Wilde C.J.

[244] "R. v. Mehegan, 7 Cox, 145: R. v. Johnson, L. & C. 632, and that class of cases are not now law; *see* R. v. Brice, 7 Man. L.R. 627": Taschereau, *supra*, note 100 at 253.

[245] *Supra*, note 38.

[246] See Burbidge, *supra*, note 241, at 250, note 7.

[247] See *R. v. Day* (1841), 9 Car. & P. 722, 173 E.R. 1026 (fear); *R. v. Case, supra*, note 243 (fraud); *R. v. Nichol* (1807), Russ. & Ry. 131, 168 E.R. 720 (exercise of authority).

[248] See *R. v. Banks* (1838), 8 Car. & P. 575, 173 E.R. 624; *R. v. Meredith* (1838), 8 Car. & P. 587, 173 E.R. 630; *R. v. Martin* (1839), 9 Car. & P. 213, 173 E.R. 807; *R. v. Read* (1849), 3 Cox C.C. 266; *R. v. Cockburn* (1849), 3 Cox C.C. 543; *R. v. Johnson, supra*, note 240; *R. v. Lock* (1872), L.R. 2 C.C.R. 10.

[249] In *R. v. Cockburn, supra*, note 248, the victim was a girl under 5. Her genitals had been injured, and the counsel for the prosecution suggested that the accused might be convicted of an assault, as the consent of the child could not be presumed by reason of her tender age. The reply of the judge shows why care must be taken to ensure that provisions regarding consent are specific in order to provide protection for children. Patteson, J. — "No; that is a mistake of the law. My experience has shown me that children of very tender age may have vicious propensities. A child under ten years of age cannot give consent to any criminal intercourse, so as to deprive that intercourse of criminality, but she can give such consent as to render the attempt no assault." The prisoner was directed to be acquitted.

[250] See *R. v. Read, supra*, note 248, for an example of this in the case law.

[251] The new definition of "assault" in section 244(1) of the *Criminal Code* is for the most part the same as under the old law. Sub-section (2) makes it applicable to the sexual assault offences.

[252] *Criminal Code*, R.S.C. 1970, c. C-34, s. 244(3), *as amended by* S.C. 1980-81-82, c. 125, s. 19.

[253] A husband could, however, be convicted of being a "party" to the rape of his wife.

[254] The nature of the sexual behaviour engaged in between persons in these age groups and which come to police attention is described later in this Report.

[255] *Criminal Code*, R.S.C. 1970, c. C-34, s. 246.1(2), *as amended by* S.C. 1980-81-82, c. 125, s. 19.

[256] *Criminal Code*, R.S.C. 1970, c. C-34, s. 246.4, *as amended by* S.C. 1980-81-82, c. 135, ss. 5, 19.

[257] *Criminal Code*, R.S.C. 1970, c. C-34, s. 442(3), *as amended by* S.C. 1980-81-82, c. 125, s. 25.

[258] *Criminal Law Reform Bill, 1984* (Bill C-19), clause 35.

[259] *Ibid.*, clause 36.

[260] *Ibid.*, clause 48.

[261] *Ibid.*, clause 58.

[262] *Ibid.*, clause 206.

[263] *Ibid.*, clauses 209, 210, 214.

[264] The legal control of prostitution is a matter within the criminal law jurisdiction of the federal Parliament, and the provinces may not enable municipalities to regulate prostitution per se by passing municipal by-laws: *Westendorp v. The Queen* (1983), 2 C.C.C. (3d) 330 (S.C.C.).

[265] Obscene or otherwise unacceptable literary or visual depictions are regulated at the federal level by offences in the *Criminal Code*, as well as by provisions in legislation dealing with customs, importation, and the use of the mails. Parliament also has jurisdiction to regulate the content of radio, television, cable television, and "Pay T.V.", and does so through the Canadian Radio-Television and Telecommunications Commission (C.R.T.C.).

[266] Parliament has granted extensive powers of self-government to the two federal territories. The *Northwest Territories Act* and the *Yukon Act* establish a Council to make "ordinances" for the government of its territory in relation to a long list of subjects corresponding roughly to the list of subjects allocated to the provincial legislatures by s.92 of the *Constitution Act, 1867* (formerly the *B.N.A. Act, 1867*): *Hogg, Constitutional Law of Canada* (Toronto: Carswell, 1977) at 216.

[267] See Hogg, *Constitutional Law of Canada* (Toronto: Carswell, 1977) at 345. Where, however, a municipal by-law seeks to restrict the accessibility to young persons of "erotic" magazines, it is not sufficient for the municipality merely to purport to regulate magazines "appealing to or designed to appeal to erotic or sexual appetites or inclinations". See *Re Hamilton Independent Variety and Confectionery Stores Inc. and City of Hamilton*, not yet reported, January 17, 1983 (Ont. C.A.).

[268] The censorship of films by provincial theatre branches is bound to raise important issues of freedom of speech and of expression under the *Charter of Rights and Freedoms*. The first such test has been the Supreme Court of Ontario decision in *Re Ontario Film and Video Appreciation Society and Ontario Board of Censors*, March 25, 1983. The Divisional Court quashed decisions of the Ontario Censor Board prohibiting the public exhibition of certain films, for the reason that the criteria employed by the Board in so-acting had no legal status and therefore were not "prescribed by law" in accordance with Section 1 of the *Charter*.

[269] The *Canadian Bill of Rights*, R.S.C. 1970, Appendix III (which applies only to laws enacted at the federal level) was passed in 1960. Before 1960, the "checks" on law-makers at the federal or provincial levels were the constraints imposed by the division of legislative powers between them. See generally Tarnopolsky, *The Canadian Bill of Rights from Diefenbaker to Drybones* (1971), 17 McGill L.J. 437.